

**ITEM 7. DEVELOPMENT APPLICATION: 111-139 DARLINGHURST ROAD AND 224-226 VICTORIA STREET POTTS POINT - FORMER CREST HOTEL****FILE NO: D/2015/331****DEVELOPMENT APPLICATION NO: D/2015/331****SUMMARY**

**Date of Submission:** 13 March 2015  
Amended 30 June 2015

**Applicant:** Iris Capital

**Architect:** Durback Block Jagers

**Developer/ Owner:** Iris Capital

**Cost of Works:** \$55,054,378

**Proposal Summary:** Stage 2 Development Application for alterations and additions and a change of use from hotel accommodation (Crest Hotel) to residential development, and retention of retail and bar uses within the podium levels. The proposed development comprises 139 apartments, parking for 56 cars and 134 bicycles, a supermarket of approximately 885m<sup>2</sup> and 2 specialist retail tenancies on Level 1, as well as the retention of existing retail/ commercial premises on the ground floor including a nightclub trading as Goldfish Bowl and a Sports Bar and Gaming Room. Communal open space is proposed on the roof top of the podium, on Level 2. Proposed supermarket trading hours are 24 hours, Monday to Sunday.

The proposal complies with the maximum building height permissible of 55 metres. The proposal seeks a FSR of 8.78:1, or 4,317m<sup>2</sup> which exceeds the maximum FSR permissible of 8:1 by approximately 10%. In accordance with Clause 6.21 of Sydney LEP 2012 an additional 10% bonus FSR may be granted if the consent authority is satisfied that the proposal demonstrates design excellence through the competitive design process.

**Proposal Summary:  
(continued)**

On 21 August 2014, a Stage 1 development consent was granted for an indicative building envelope up to a height of 55m (D/2013/1747). This was required as the proposal exceeds 25 metres above ground level. A Competitive Design Process was subsequently undertaken and the winning design forms the basis of this application. The proposal is generally consistent with the Stage 1 consent. It is noted however that a Section 96 modification to the approved building envelope at Stage 1 has been lodged concurrently, to bring the approved envelope in line with the Stage 2 application.

The proposal was notified and advertised for a period of 28 days. As a result of this notification, there were 9 submissions received. Issues raised in submissions relate to view loss, overshadowing, insufficient parking and increased traffic congestion, noise impacts on future residents, heritage impacts, and the aesthetics of the design.

On 30 June 2015, the proposal was amended to delete the commercial signage, modify the height of the Darlinghurst Road awning and provide an additional window to the southern end of the podium.

The application does not constitute integrated development; however, as the Eastern Suburbs railway line and Kings Cross train station extend beneath the southern portion of the site Sydney Trains were notified. Sydney Trains raised no objection to the application, subject to the satisfaction of certain requirements. These have been included in the recommended conditions of consent.

As the proposal retains the existing structure, loading cannot be accommodated within the site due to the low clearance heights within the basement. Under Sydney DCP 2012, a minimum of 4 loading spaces are required to be provided within the site for the supermarket use in addition to 2 loading spaces for the residential component of the development. An existing on street loading zone on Victoria Street is proposed to be utilised for all site servicing, including waste collection and supermarket deliveries. One van loading space is provided within the basement car park to service the residential development. A Traffic Assessment has been submitted which demonstrates that the loading zone on Victoria Street is capable of accommodating the 3 proposed supermarket deliveries per day, in addition to servicing the existing commercial uses. In this instance, the continued use of the on-street loading zone on Victoria Street is acceptable in the circumstances.

The proposal is not considered to result in any significant impacts on surrounding development in terms of view loss or overshadowing. In order to compensate for the existing floor to ceiling heights of 2.4m, the proposal provides double height spaces, cross over apartments with good outlook and solar access, and generously sized apartments. Subject to recommended conditions requiring some design modifications to address some undersized apartments, the proposal achieves an acceptable level of residential amenity and will not result in privacy impacts. The proposal responds appropriately to surrounding development, and will achieve a high standard of architectural design and finishes that is considered to demonstrate design excellence.

**Summary Recommendation:** The development application is recommended for approval, subject to conditions.

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) State Environmental Planning Policy No 55— Remediation of Land
- (iv) State Environmental Planning Policy No 65— Design Quality of Residential Flat Development
- (v) State Environmental Planning Policy No 32— Urban Consolidation (Redevelopment of Urban Land)
- (vi) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (vii) State Environmental Planning Policy (Infrastructure) 2007
- (viii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (ix) State Environmental Planning Policy No 64 – Advertising and Signage

**Attachments:**

- A - Proposed Drawings
- B - Stage 1 Development Consent (D/2013/1747) and Approved Building Envelope
- C - Competitive Design Alternatives Process Report

**RECOMMENDATION**

It is resolved that consent be granted to Development Application No. D/2015/331, subject to the following conditions:

**SCHEDULE 1A****Approved Development/Design Modifications/Covenants and Contributions/Use and Operation**

**Note:** Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

**(1) APPROVED DEVELOPMENT**

- (a) Development must be in accordance with Development Application No. D/2015/331 dated 13 March 2015 and the following drawings:

<b>Drawing Number</b>	<b>Architect</b>	<b>Date</b>
1667.00 Rev	Durbach Block Jagers	27/02/15
1667.01 Rev	Durbach Block Jagers	27/02/15
1667.02 Rev	Durbach Block Jagers	27/02/15
1667.03 Rev	Durbach Block Jagers	27/02/15
1667.04 Rev B	Durbach Block Jagers	24/06/15
1667.05 Rev B	Durbach Block Jagers	24/06/15
1667.06 Rev	Durbach Block Jagers	27/02/15
1667.07 Rev	Durbach Block Jagers	27/02/15
1667.08 Rev	Durbach Block Jagers	27/02/15
1667.09 Rev	Durbach Block Jagers	27/02/15
1667.10 Rev	Durbach Block Jagers	27/02/15
1667.11 Rev	Durbach Block Jagers	27/02/15
1667.12 Rev	Durbach Block Jagers	27/02/15
1667.13 Rev	Durbach Block Jagers	27/02/15
1667.14 Rev	Durbach Block Jagers	27/02/15
1667.15 Rev	Durbach Block Jagers	27/02/15

<b>Drawing Number</b>	<b>Architect</b>	<b>Date</b>
1667.16 Rev	Durbach Block Jagers	27/02/15
1667.17 Rev	Durbach Block Jagers	27/02/15
1667.18 Rev	Durbach Block Jagers	27/02/15
1667.19 Rev	Durbach Block Jagers	27/02/15
1667.20 Rev	Durbach Block Jagers	27/02/15
1667.21 Rev	Durbach Block Jagers	27/02/15
1667.22 Rev	Durbach Block Jagers	27/02/15
1667.23 Rev	Durbach Block Jagers	27/02/15
1667.24 Rev	Durbach Block Jagers	27/02/15
1667.25 Rev B	Durbach Block Jagers	27/02/15
1667.26 Rev B	Durbach Block Jagers	24/06/15
1667.27 Rev	Durbach Block Jagers	27/02/15
1667.28 Rev	Durbach Block Jagers	27/02/15
1667.29 Rev	Durbach Block Jagers	27/02/15
1667.30 Rev	Durbach Block Jagers	27/02/15
1667.31 Rev	Durbach Block Jagers	27/02/15
1667.35 Rev A	Durbach Block Jagers	27/02/15
14092-DA01	Durbach Block Jagers	27/02/15
14092-DA02	Durbach Block Jagers	27/02/15
14092-DA03	Durbach Block Jagers	27/02/15
14092-DA04	Durbach Block Jagers	27/02/15
14092-DA05	Durbach Block Jagers	27/02/15
14092-DA06	Durbach Block Jagers	27/02/15
14092-DA07	Durbach Block Jagers	27/02/15

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

**(2) BUILDING HEIGHT**

- (a) The height of the building must not exceed RL 92.275 (AHD) to the top of the building and RL 91.55 (AHD) to the parapet of the building.
- (b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification that the height of the building accords with (a) above, to the satisfaction of the Principal Certifying Authority.

**(3) SURRENDER OF NIGHTCLUB CONSENT**

Prior to the issue of any Occupation Certificate, the landowner/developer shall surrender the development consents D/2008/189/C and D/2015/152 which relate to the use of the ground floor as the Goldfish Bowl nightclub, bottle shop, TAB and gaming room (and other development consents that specifically relate to the nightclub use of the ground floor), in accordance with the prescribed form 3 of the Environmental Planning and Assessment Amendment Regulation 1998.

The replacement use within the vacated ground floor area previously occupied by the nightclub uses is approved as retail shop (excluding any food and drink use), and trading between the hours of 8.00am to 7.00pm. However, a Development Application is to be lodged with Council for the new use/s.

**(4) SURRENDER OF SIGNAGE CONSENT**

Prior to the issue of a Construction Certificate, the landowner/developer shall surrender the development consent number U93/00716 which was approved on 27 August 1993, for '111-139 Darlinghurst road, Kings Cross', in accordance with the prescribed form 3 of the Environmental Planning and Assessment Amendment Regulation 1998.

**(5) FLOOR SPACE RATIO - ALL OTHER AREAS**

The following applies to Floor Space Ratio:

- (a) The Floor Space Ratio for the business use must not exceed 1.52:1; for the residential use must not exceed 7.26:1; and for the total must not exceed 8.78:1 calculated in accordance with Sydney Local Environmental Plan 2012. For the purposes of the calculation of FSR, the Gross Floor Area of the commercial component is 2,482sqm, for the residential component is 11,835sqm, and the total Gross Floor Area is 14,317sqm.
- (b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification of the total and component Gross Floor Areas (by use) in the development, utilising the definition under Sydney Local Environmental Plan 2012, applicable at the time of development consent, to the satisfaction of the Principal Certifying Authority.

- (c) The apartment storage located on level 2 (Drawing No. 1667.06) is to be relocated to basement level 1 and reconfigured so that it is accommodated within the space occupied by the hydraulic plant which is identified on Drawing No. 1667.03 hydrant tank, sprinkler tank, pcw tank and pumps. The hydraulic plant is to be relocated to level 2 within the area identified as apartment storage on Drawing No. 1667.06. The hydraulic plant is to be appropriately treated in accordance with the relevant Australian Standards to ensure that any noise emissions from the operation of the plant complies with City of Sydney requirements. Amended plans detailing this change are to be submitted to the Director City Planning, Development and Transport for approval prior to the issue of a Construction Certificate.

#### **(6) DESIGN QUALITY EXCELLENCE**

- (a) In order to ensure the design quality excellence of the development is retained:
  - (i) The design architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
  - (ii) The design architect is to have full access to the site and is to be authorised by the Applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
  - (iii) Evidence of the design architect's commission is to be provided to the Council prior to release of the Construction Certificate.
- (b) The design architect of the project is not to be changed without prior notice and approval of the Council's Director City Planning, Development and Transport.

#### **(7) DESIGN MODIFICATIONS**

The design of the building must be modified as follows:

- (a) Apartments 3.02, 3.07, 10.18, 13.08, and 14.08 must be redesigned as studio apartments as opposed to 1 bedroom apartments.
- (b) Apartments 10.01, 12.01, 13.01, 14.01, 15.01, 16.01, located at the southern end of the tower must be redesigned as 1 bedroom apartments as opposed to 2 bedroom apartments.
- (c) Studios on Levels 6, 8 and 10, and the immediately adjoining one bedroom apartments 6.16, 8.16 and 10.16 must be redesigned and amalgamated as 3, two bedroom apartments as opposed to separate studios and one bedroom apartments.
- (d) Adjoining apartments 12.02 and 12.03, 13.02 and 13.03, 14.02 and 14.03, 15.02 and 15.03, and 16.02 and 16.03 must be redesigned as 5 two bedroom apartments as opposed to adjoining one bedroom apartments.

- (e) The awning above the residential entrance from Victoria Street must be a minimum of 3.2 metres above footpath level.
- (f) One accessible parking space must be allocated to each adaptable apartment. Revised plans of the basement car parking levels are required to be submitted and approved.

The modifications are to be submitted to and approved by Council's Director City Planning, Development and Transport prior to the issue of a Construction Certificate.

**(8) CURVED GLAZING**

The glazing to the southern elevation of the tower and the north-eastern corner of the tower from Levels 13 to 18 must be curved glass, not straight or faceted glass. Details of this glazing must be submitted for the approval of Council's Director City Planning, Development and Transport, prior to the issue of the Construction Certificate.

**(9) FLOOR SLAB DETAILS**

Prior to the issue of a Construction Certificate, adequate details are to be submitted for the approval of the Council's Director City Planning, Development and Transport. These are to include architectural details of the floor sections, based on surveyed existing slabs and extended new slabs that show the following: any slab deflection, any required slab reinforcement, drop down panels, ceiling including any required acoustic and thermal insulation/isolation, wet areas and balcony flooring and drainage, lighting, mechanical ventilation and fire service strategy and floor finishes. These details are to confirm that floor to ceiling heights of 2.4 metres are met in all habitable spaces.

**(10) PUBLIC ART STRATEGY**

A public art strategy for the site must be submitted to and approved by Council's Director City Planning, Development and Transport prior to issue of a Construction Certificate. The public artwork must be in accordance with the *Sydney DCP 2012* and the *Public Art Policy*. Installation of the art work must be completed to Council's written satisfaction prior to the issue of any Occupation Certificate.

**(11) MEMORIAL PROTECTION**

The adjoining memorial location on Council land does not form part of this approval. The memorial area is to be protected at all times during construction of the development and measures are to be approved by Council's Director City Planning, Development and Transport to achieve this, prior to the issue of a Construction Certificate.

**(12) MATERIALS AND SAMPLES BOARD**

A materials sample board detailing all proposed finishes must be submitted to and approved by Council's Area Planning Manager prior to a Construction Certificate being issued.



**(13) RESTRICTION ON RESIDENTIAL DEVELOPMENT**

The following restriction applies to buildings approved for residential use:

- (a) The accommodation portion of the building (levels 2 to 18) must be used as permanent residential accommodation only and not for the purpose of a hotel, motel, serviced apartments, private hotel, boarding house, tourist accommodation or the like, other than in accordance with the *Sydney Local Environmental Plan 2012*.
- (b) A restrictive covenant is to be registered on the title of the development site in the above terms and restricting any change of use of those levels from "residential flat building" defined in *Sydney Local Environmental Plan 2012*. The covenant is to be registered on title prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, to the satisfaction of the Council. All costs of the preparation and registration of all associated documentation are to be borne by the applicant.
- (c) If a unit contains tenants, it must be subject to a residential tenancy agreement for a term of at least three months.
- (d) No person can advertise or organise the use of residential apartments approved under this consent for short term accommodation or share accommodation.

**(14) SECTION 94 EASTERN PRECINCT CITY OF SYDNEY DEVELOPMENT CONTRIBUTIONS PLAN 2006**

As a consequence of this development, Council has identified an additional demand for public amenities and facilities. Pursuant to Section 94 of the Environmental Planning and Assessment Act, 1979 (as amended), and City of Sydney Section 94 Contributions Development Contributions Plan 2006 the following monetary contributions towards the cost of providing facilities and amenities are required.

<u>Contribution Category</u>	<u>Amount</u>
Community Facilities	\$104,416.69
Public Domain	\$209,956.94
New Open Space	\$1,638,057.36
Accessibility	\$16,524.08
Management	\$17,866.34
<b>Total</b>	<b>\$1,986,821.41</b>

The above payments will be adjusted according to the relative change in the Consumer Price Index using the following formula.

Contributions at Time of Payment =  $C \times \text{CPI2} / \text{CPI1}$

where:

- C is the original contribution amount as shown above;
- CPI2 is the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of statistics at the time of payment; and
- CPI1 is the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics at the date of calculation being – June 2015.

The contribution must be paid prior to issue of a Construction Certificate. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the City of Sydney. Personal or company cheques will not be accepted.

**Please contact Council's Planning Administration staff at [planningsystemsadmin@cityofsydney.nsw.gov.au](mailto:planningsystemsadmin@cityofsydney.nsw.gov.au) to confirm the amount payable, prior to payment.**

Copies of the City of Sydney Section 94 Development Contributions Plan 2006 may be inspected at Council's offices.

#### **(15) USE OF COMMON AREAS AND FACILITIES**

- (a) The outdoor terrace and indoor recreation room on Level 2 must be available for the use of all residents of the building, and must be designated as common property on any strata subdivision of the site, with no exclusive use rights.
- (b) The use of the communal outdoor terrace on Level 2 must be restricted to between 7am and 10pm daily.

#### **(16) ACCESS AND FACILITIES FOR PERSONS WITH DISABILITIES**

The building must be designed and constructed to provide access and facilities for people with a disability in accordance with the *Building Code of Australia*.

If, in complying with this condition, amendments to the development are required, the design changes must be submitted to and approved by Council prior to a Construction Certificate being issued.

#### **(17) ACCESS FOR PERSONS WITH DISABILITIES - OFFICE / SHOP FITOUTS**

In accordance with the *Building Code of Australia* the proposed office / shop layout and design must comply with Australian Standard 1428.1: General requirements for access - New building works.

**(18) NO AIR CONDITIONING UNITS TO FACADE OR BALCONIES OF BUILDING**

Approval is not granted for the installation of individual air conditioning units to the facade or balconies of the building.

**(19) AIR CONDITIONERS IN RESIDENTIAL BUILDINGS**

Air conditioners must comply with the requirements of Protection of the Environment Operations (Noise Control) Regulation 2008 and shall not:

- (a) Emit noise that is audible within a habitable room in any other residential property (regardless of whether any door or window to that room is open):
  - (i) before 8.00am and after 10.00pm on any Saturday, Sunday or public holiday; or
  - (ii) before 7.00am and after 10.00pm on any other day; or
- (b) Emit a sound pressure level that when measured at the boundary of any other residential property, at a time other than those specified in (i) and (ii) above, which exceeds the background ( $L_{A90, 15 \text{ minute}}$ ) by more than 5dB(A). The source and background noise level must be measured as an  $L_{Aeq 15 \text{ minute}}$  and  $L_{A90 15 \text{ minute}}$  in accordance with Australian Standard AS1055:1997, Acoustics – Description and measurement of environmental noise.

**(20) AWNING MAINTENANCE**

The awning must be inspected and maintained to ensure the structural integrity, aesthetic and functional quality of the awning.

**(21) SIGNAGE STRATEGY**

Consent is not granted for any commercial business signage as part of this consent. A separate development application is to be submitted seeking approval of a signage strategy for the building. The signage strategy development application must include information and scale drawings of the location, type, construction, materials and total number of signs appropriate for the building.

**(22) SUPERMARKET PLAN OF MANAGEMENT**

The operation of the supermarket must always be operated / managed in accordance with the Plan of Management, dated 14 August 2015 that has accompanied this application and approval. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management. In this regard, the Plan of Management is to be updated to reflect the conditions of this consent. The revised Plan of Management is to be approved by the City's Area Planning Manager prior to the supermarket use commencing.

**(23) SHOPPING TROLLEY MANAGEMENT PLAN - MINOR**

Should the use of shopping trolleys be required, a management plan must be submitted to and approved by Council prior to the use of trolleys. The management plan is to detail the proposed method of retaining trolleys on site, trolley tracking and trolley recovery. Trolleys must remain and be contained within the supermarket tenancy. The management plan must be implemented at all times during the use of shopping trolleys and is to be reviewed on an as needed basis or annually whichever is sooner. Any changes to the plan are to be approved by Council, in writing, prior to the amendment of the plan.

**(24) SUPERMARKET AND RETAIL FIT-OUT**

The future fit-outs of the supermarket and retail tenancies are to ensure that no fittings or shelves abut the glazed external walls. All shop shelving is to be set back at least one metre from the inside face of the glazing so as to not obscure shopfront visibility. The glass shall also not be tinted or obscured by blinds or the like.

**(25) HOURS OF OPERATION - SUPERMARKET**

The hours of operation of the supermarket are regulated as follows:

- (a) The hours of operation must be restricted to between 6.00am and 2.00am the following day, Monday to Sunday.

**(26) SUPERMARKET DELIVERIES**

- (a) Deliveries associated with the supermarket are strictly limited to between the hours of 7.00am and 6.00pm Monday to Saturday, or shall be within the times provided in the loading zone area in Victoria Street.
- (b) Deliveries must not be placed on the street or left outside of the property boundaries or in common areas of the building.
- (c) Delivery vehicles must not at any time obstruct the public way.

**(27) HOURS OF OPERATION – LEVEL 1 RETAIL**

The hours of operation of the other Level 1 retail tenancies are regulated as follows:

- (a) The hours of operation must be restricted to between 7.00am and 10.00pm, Monday to Sunday.

**(28) NO SPEAKERS OR MUSIC OUTSIDE**

Speakers and/or noise amplification equipment must not be installed and music must not be played in any of the outdoor areas associated with the premises including the public domain. Speakers located within the premises must not be placed so as to direct the playing of music towards the outdoor areas associated with the premises.

**(29) NO SPRUICKING NOISE**

No persons (such as those commonly known as spruikers) or recordings or other devices which have the effect of spruicking are to be located on Council owned property. Furthermore, the sound level of any spruicking generated within privately owned land must not be audible on any adjacent property with a shared boundary.

**(30) WASTE/RECYCLING COLLECTION**

- (a) The collection of waste and recycling must only occur between 7.00am and 8.00pm weekdays and 9.00am and 5.00pm weekends and public holidays, to avoid noise disruption to the surrounding area.
- (b) The development must have a residential rating or have applied for a residential rating prior to the commencement of Council waste services.
- (c) Prior to an Occupation Certificate being issued and/or commencement of the use, whichever is earlier, the building owner must ensure that there is a contract with a licensed contractor for the removal of **all commercial waste**. No garbage is to be placed on the public way, e.g. footpaths, roadways, plazas, reserves, at any time.

**(31) NOISE - GENERAL**

- (a) The emission of noise associated with the use of the premises including the cumulative operation of any mechanical plant and equipment, and air conditioning shall comply with the following:
  - (i) The  $L_{Aeq, 15 \text{ minute}}$  noise level emitted from the use must not exceed the project specific noise level for that receiver as determined in accordance with the *NSW EPA Industrial Noise Policy*. Noise must be measured in accordance with the Industrial Noise Policy and relevant requirements of Australian Standard AS 1055-1997 Acoustics – Description and measurement of environmental noise.
  - (ii) Project specific noise levels shall be determined by establishing the existing environmental noise levels, in complete accordance with the assessment  $L_{A90, 15 \text{ minute}}$  / rating  $L_{A90, 15 \text{ minute}}$  process to be in accordance with the requirements for noise monitoring listed in the *NSW EPA Industrial Noise Policy* and relevant requirements of Australian Standard AS1055-1997 Standard AS 1055-1997 Acoustics – Description and measurement of environmental noise.
  - (iii) Modifying factors in Table 4.1 of the *NSW EPA Industrial Noise Policy* are applicable.
- (b) An  $L_{Aeq, 15 \text{ minute}}$  noise level emitted from the use must not exceed the  $L_{A90, 15 \text{ minute}}$  noise level by more than 3dB in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed inside any habitable room of any affected residence or noise sensitive commercial premises provided that:

- (i) Where the  $L_{A90, 15 \text{ minute}}$  noise level is below the threshold of hearing,  $T_f$  at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226 : 2003- Normal Equal-Loudness-Level Contours then the value of  $T_f$  corresponding to that Octave Band Centre Frequency shall be used instead.
- (ii) The  $L_{Aeq, 15 \text{ minute}}$  noise level and the  $L_{A90, 15 \text{ minute}}$  noise level shall both be measured with all external doors and windows of the affected residence closed.
- (iii) The relevant background noise level ( $L_{A90, 15 \text{ minute}}$ ) is taken to mean the day, evening or night rating background noise level determined in complete accordance with the methodology outlined in the *NSW EPA Industrial Noise Policy* and Australian Standard AS1055.1997 Acoustics – Description and measurement of environmental noise.
- (iv) Background noise shall be established in the absence of all noise emitted from the use but with the ventilation equipment normally servicing the affected residence operating. Background noise measurements are to be representative of the environmental noise levels at the affected location.
- (v) Modifying factors in Table 4.1 of the *NSW EPA Industrial Noise Policy* are applicable. Internal Noise measurements are not to be corrected for duration.

### **(32) ACOUSTIC DESIGN**

- (a) The proposed alterations must not affect the existing acoustic integrity of the building in relation to the control of noise emissions from the premises.
- (b) No additional equipment may be installed or changes made to the acoustic design unless certified by a suitably qualified acoustic consultant\* that the equipment will not increase noise emissions from building.

Note: Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

### **(33) ADDITIONAL VAN SERVICE SPACES**

Two additional service spaces for delivery vans, in addition to the one space already provided, are to be accommodated within the basement levels of the development. These spaces are not to be allocated to any tenants or apartments and are to remain as common property on any future strata plan.

### **(34) ALLOCATION OF PARKING**

The number of car parking spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

Car Parking Type	Number
Residential spaces	Up to a maximum of 33
Accessible residential spaces	No less than 21
Retail parking	2
Total	56

### (35) PARKING DESIGN

The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 Parking facilities Part 1: Off-street car parking, AS/NZS 2890.2 Parking facilities Part 2: Off-commercial vehicle facilities and AS/NZS 2890.6 Parking facilities Part 6: Off-street parking for people with disabilities. The details must be submitted to and approved by the Principal Certifying Authority prior to a Construction Certificate being issued.

### (36) ALLOCATION OF ACCESSIBLE CAR PARKING SPACES

For residential development, accessible car parking spaces for people with mobility impairment are only to be allocated as visitor parking or to adaptable units. Where allocated to adaptable units, the unit(s) and car spaces must be assigned to the unit in any future strata subdivision of the building.

### (37) ASSOCIATED ROADWAY COSTS

All costs associated with the construction of any new road works including kerb and gutter, road pavement, drainage system and footway shall be borne by the developer. The new road works must be designed and constructed in accordance with the City's "Sydney Streets Technical Specification" including amendments and "Sydney Streets Design Code".

### (38) BICYCLE PARKING AND END OF TRIP FACILITIES

- (a) The minimum number of bicycle parking spaces and end of trip facilities to be provided for the development must comply with the table below.

Bicycle Parking Type	Number	Requirements
Residential	139	Spaces must be a Class 1 or Class 2 (or combination)
Visitor (Residential)	14	Spaces must be Class 2 or Class 3 bicycle rails
Employee	10	Spaces must be Class 3 bicycle rails located on-site and at street level of Basement Level 1
Customer	14	Spaces must be Class 3 bicycle rails located on-site and at street level of Basement Level 1

Notes:

- (i) If a basement storage area on title that is large enough to store a bike and is no smaller than a class 1 bike locker this can be counted as a space.
- (b) The layout, design and security of bicycle facilities must comply with the minimum requirements of Australian Standard AS 2890.3 Parking Facilities Part 3: Bicycle Parking Facilities. The details must be submitted to and approved by the Principle Certifying Authority confirming prior to the Construction Certificate being issued.

**(39) PROHIBITION ON PARTICIPATION IN RESIDENT PARKING PERMIT SCHEME - APPLICATION OF CITY OF SYDNEY PARKING POLICY**

All owners, tenants and occupiers of this building are advised that it is the Policy of Council that they are not eligible to participate in any existing or proposed Council on-street resident parking schemes. The owner of the dwelling must advise all intending owners, tenants and occupiers of the dwelling of this prohibition in writing at the time of entering into a purchase / lease / occupancy agreement.

**(40) SIGNAGE TO INDICATE NON PARTICIPATION IN RESIDENT PARKING PERMIT SCHEME**

Signs reading 'all owners, tenants and occupiers of this building are advised that they are not eligible to obtain an on-street resident parking permit from Council' must be *permanently displayed and located* in prominent places such as at display apartments and on all directory boards or notice boards, where they can easily be observed and read by people entering the building. The signs must be erected prior to an Occupation Certificate being issued and must be maintained in good order at all times *by the Owners of the building*.

**(41) PARKING ON COMMON PROPERTY AREAS**

No part of the common property is to be used for the parking or storage of vehicles or boats. The strata subdivision of the building is to include an appropriate documentary restriction pursuant to Section 88B of the Conveyancing Act 1919, so burdening common property, with the Council being the authority to release, vary or modify the restriction.

**(42) ACCESS DRIVEWAYS TO BE LEPT CLEAR**

At all times the car parking spaces and access driveways must be kept clear of goods and must not be used for storage purposes, including garbage storage.

**(43) SIGNS AT EGRESS**

The following signs must be provided and maintained within the site at the point(s) of vehicle egress:

- (a) Compelling drivers to stop before proceeding onto the public way.



- (b) Compelling drivers to "Give Way to Pedestrians" before crossing the footway; or compelling drivers to "Give Way to Pedestrians and Bicycles" before crossing a footway on an existing or identified shared path route.

**(44) TRAFFIC WORKS**

Any proposals for alterations to the public road, involving traffic and parking arrangements, must be designed in accordance with RMS Technical Directives and must be referred to and agreed to by the Local Pedestrian, Cycling and Traffic Calming Committee prior to any work commencing on site.

**(45) VEHICLE FOOTWAY CROSSING**

A separate application is to be made to, and approved by, Council for the construction of any proposed vehicle footway crossing or for the removal of any existing crossing and replacement of the footpath formation where any such crossings are no longer required.

All disused or redundant vehicle crossings and laybacks must be removed and footway, kerb, gutter and road restoration reinstated in accordance with Council's standards, to suit the adjacent finished footway and edge treatment materials, levels and details, or as otherwise directed by Council officers. All construction and replacement works are to be completed in accordance with the approved plans prior to the issue of an Occupation Certificate.

Note: In all cases, the construction materials should reinforce the priority of pedestrian movement over that of the crossing vehicle.

**(46) SAFETY BY DESIGN**

The Private Certifier is to ensure that the design and security management recommendations in the Crime Risk Report are adhered to during the design development of the building.

**(47) PROJECTIONS OVER PUBLIC ROAD**

The proposed balconies and architectural embellishments attached to the building, shown as overhanging the footways of Darlinghurst Road and Victoria Street, must not overhang the alignments of those streets by more than 0.605m, and shall comply with the provisions of Schedule 4 ("Projections over or into public roads") of the Sydney Development Control Plan 2012 (except for the provision relating to a 450mm overhang).

**SCHEDULE 1B**

**Prior to Construction Certification/Commencement of Work/Health and Building**

**Note:** Prior to the issue of the Construction Certificate, sufficient information must be forwarded to the certifying authority (whether Council or a private accredited certifier) illustrating compliance with the relevant requirements of the Building Code of Australia (and a copy forwarded to Council where Council is not the certifying authority). If Council is to be the certifying authority, please contact the Building Unit to discuss the requirements prior to submission of the application for construction certificate.

**(48) COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO CONSTRUCTION AND OR OCCUPATION CERTIFICATES**

- (a) All performance parameters, requirements, engineering assumptions and recommendations contained in the acoustic report prepared by *Acoustic Logic Ref 20131019.3/0308A/R2/BW dated 03/08/2015* titled *Noise Impact Assessment- Stage 2DA*, must be implemented as part of the detailed design assessment and implemented into the design drawings.
- (b) The Private Certifier must ensure that all acoustic requirements to comply with Clause 87 of the Infrastructure SEPP will be designed and constructed into the development.

**(49) LOT CONSOLIDATION**

All land titles within the site must be consolidated into one lot. A plan of consolidation must be registered with the Land and Property Information Division of the Department of Lands, prior to an Occupation Certificate being issued.

**(50) STRATA SUBDIVISION – DEVELOPMENT CONSENT**

Any proposal for strata subdivision will require development consent and therefore the lodgement of a separate development application or complying development application and subsequent approval from Council, or an accredited certifier, of the Strata Plan – and issue of a Strata Certificate, under the *Strata Schemes (Freehold Development) Act 1973*.

**(51) LAND SUBDIVISION – SEPARATE DA REQUIRED**

Any proposal for land subdivision will require a separate application to Council to obtain development consent and the subsequent approval of the plan of subdivision and issue of a Subdivision Certificate under Section 109J of the *Environmental Planning and Assessment Act 1979*.

**(52) TREES THAT MUST BE RETAINED**

That the existing trees detailed in Table 1 below be retained and protected throughout the proposed development.

Table 1 – Tree Retention:

Approval is NOT granted for the removal of the following trees, which Council has determined to be prominent landscape elements.

<b>Tree No</b>	<b>Botanical/Common Name</b>	<b>Location</b>
3x	Platanus acerifolia (Plane trees)	Street trees – Victoria Street
2x	Platanus acerifolia (Plane trees)	Street trees – Darlinghurst Road
1x	Jacaranda mimosifolia (Jacaranda)	Council owned garden area on southern side of building

**(53) TREE PROTECTION DURING CONSTRUCTION**

Stockpiling, storage or mixing of materials, washing of equipment, vehicle parking, disposal of liquids, machinery repairs and refuelling, disposal of building materials such as cement slurry, siting of offices or sheds and the lighting of fires, must not occur within 5m of the trunk of any tree to be retained.

**(54) STREET TREE PROTECTION**

Street trees must be protected in accordance with the Australian Standard 4970 Protection of Trees on Development Sites. All street trees must be protected during the construction works as follows:

- (a) Tree trunk and major limb protection must be undertaken prior to or during the installation of any hoarding or scaffoldings. The protection must be installed by a qualified Arborist (AFQ 2 or 3) and must include:
  - (i) An adequate clearance, minimum 250mm, must be provided between the structure and tree branches, limbs and trunk at all times;
  - (ii) Tree trunk/s and/or major branches, located within 500mm of any hoarding or scaffolding structure, must be protected by wrapped hessian or similar material to limit damage, and
  - (iii) Timber planks (50mm x 100mm or similar) must be placed around tree trunk/s. The timber planks must be spaced at 100mm intervals, and must be fixed against the trunk with tie wire, or strapping. The hessian and timber planks must not be fixed to the tree in any instance, or in any fashion;
  - (iv) Tree trunk and major branch protection is to remain in place for the duration of construction and development works, and must be removed at the completion of the project.
- (b) All hoarding support columns are to be placed a minimum of 300mm from the edge of the existing tree pits/setts, so that no sinking or damage occurs to the existing tree setts. Supporting columns must not be placed on any tree roots that are exposed.
- (c) Materials or goods, including site sheds, must not be stored or placed:
  - (i) around or under the tree canopy; or
  - (ii) within two (2) metres of tree trunks or branches of any street trees.
- (d) Protective fencing (1.8 metre chain wire mesh fencing) must be erected on top of the hoarding [Tree Management Team to insert location of hoarding and affected trees] to protect branches during the construction works.

- (e) Any damage sustained to street tree/s as a result of the erection of hoardings, scaffolding, or due to the loading/unloading of vehicles adjacent the site, must be immediately reported to the Council's Street Tree Contract Coordinator on 9265 9333, in order to determine the appropriate action for maintaining the health and structural integrity of any damaged street tree.

**(55) STREET TREE PRUNING**

- (a) The consent from Council must be obtained prior to the undertaking of any street tree pruning works including tree roots greater than 40mm diameter. Only minor pruning works will be approved by Council.
- (b) Any pruning that is required to accommodate hoardings, scaffolding, or to accommodate the loading/unloading of vehicles, and has been approved by Council, must be carried out by a qualified Arborist (AQF3), and must be in accordance with AS4373 Australian Standards 'Pruning of Amenity Trees'.

**(56) CONSTRUCTION TRAFFIC MANAGEMENT PLAN**

A Construction Traffic Management Plan must be submitted to and approved by Council prior to a Construction Certificate being issued.

**(57) DEMOLITION AND CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN**

Prior to the construction certificate a site specific Environmental Management Plan (EMP) must be prepared for the site and submitted to the City's Area Planning Manager for written approval.

The EMP must consider all potential environmental impacts from all activities conducted onsite as referenced in the Preliminary Construction Management dated 19 February 2015, including but not limited to sedimentation control, movement of waste materials, contamination containment, stockpiles, noise and vibration, air quality impacts, odours and dust emissions.

All works must be undertaken onsite in accordance with the approved Environmental Management Plan

**(58) DEMOLITION AND CONSTRUCTION MANAGEMENT**

- (a) Prior to the commencement of demolition and/or excavation work, the following details must be submitted to and be approved by the Principal Certifying Authority:
  - (i) Plans and elevations showing distances of the subject building from the location of adjoining and common/party walls, and (where applicable) the proposed method of facade retention.
  - (ii) A Demolition Work Method Statement prepared by a licensed demolisher who is registered with the WorkCover Authority. (The demolition by induced collapse, the use of explosives or on-site burning is not permitted.)

- (iii) A Waste Management Plan for the demolition and or excavation of the proposed development.
- (b) Such statements must, where applicable, be in compliance with AS2601-2001 Demolition of Structures, the *Work, Health and Safety Act 2011* and Regulation; Council's *Policy for Waste Minimisation in New Developments 2005*, the *Waste Avoidance and Resource Recovery Act 2001*, and all other relevant acts and regulations and must include provisions for:
  - (i) A Materials Handling Statement for the removal of refuse from the site in accordance with the *Waste Avoidance and Resource Recovery Act 2001*.
  - (ii) The name and address of the company/contractor undertaking demolition/excavation works.
  - (iii) The name and address of the company/contractor undertaking off site remediation/disposal of excavated materials.
  - (iv) The name and address of the transport contractor.
  - (v) The type and quantity of material to be removed from site.
  - (vi) Location and method of waste disposal and recycling.
  - (vii) Proposed truck routes, in accordance with this development consent.
  - (viii) Procedures to be adopted for the prevention of loose or contaminated material, spoil, dust and litter from being deposited onto the public way from trucks and associated equipment and the proposed method of cleaning surrounding roadways from such deposits. (Note: With regard to demolition of buildings, dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site).
  - (ix) Measures to control noise emissions from the site.
  - (x) Measures to suppress odours.
  - (xi) Enclosing and making the site safe.
  - (xii) Induction training for on-site personnel.
  - (xiii) Written confirmation that an appropriately qualified Occupational Hygiene Consultant has inspected the building/site for asbestos, contamination and other hazardous materials, in accordance with the procedures acceptable to WorkCover Authority.
  - (xiv) An Asbestos and Hazardous Materials Clearance Certificate by a person approved by the WorkCover Authority.

- (xv) Disconnection of utilities.
  - (xvi) Fire Fighting. (Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed).
  - (xvii) Access and egress. (Demolition and excavation activity must not cause damage to or adversely affect the safe access and egress of the subject building or any adjacent buildings).
  - (xviii) Waterproofing of any exposed surfaces of adjoining buildings.
  - (xix) Control of water pollution and leachate and cleaning of vehicles tyres (proposals must be in accordance with the *Protection of the Environmental Operations Act 1997*).
  - (xx) Working hours, in accordance with this development consent.
  - (xxi) Any WorkCover Authority requirements.
- (c) The approved work method statements and a waste management plan as required by this condition must be implemented in full during the period of construction.

**(59) DEMOLITION, EXCAVATION AND CONSTRUCTION NOISE AND VIBRATION MANAGEMENT PLAN**

A site specific noise management plan shall be submitted to the Council for comment and approval prior to issue of any Construction Certificate.

The plan must be prepared by a suitably qualified person who possesses the qualifications to render them eligible for membership of the Australian Acoustic Society, Institution of Engineers Australia or the Australian Association of Acoustic Consultants.

The plan must include but not be limited to the following:

- (a) identification of noise sensitive receivers near to the site.
- (b) A prediction as to the level of noise impact likely to affect the nearest noise sensitive receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite. A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the *City of Sydney Construction Hours /Noise Code of Practice 1992* for the typical construction hours of 07.00am to 7.00pm. Where resultant site noise levels are likely to be in exceedance of this noise criteria then a suitable proposal must be given as to the duration and frequency of respite periods that will be afforded to the occupiers of neighbouring property.
- (c) A representative background noise measurement ( $L_{A90, 15 \text{ minute}}$ ) should be submitted, assessed in the vicinity of any potentially affected receiver locations and measured in accordance with AS 1055:1.2.1997.

- (d) Confirmation of the level of community consultation that has/is and will be undertaken with Building Managers/ occupiers of the main adjoining noise sensitive properties likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.
- (e) Confirmation of noise monitoring methodology that is to be undertaken during the main stages of work at neighbouring noise sensitive properties in order to keep complaints to a minimum and to ensure that noise from site works complies with the noise criteria contained within City's Construction Noise Code.
- (f) What course of action will be undertaken following receipt of a complaint concerning offensive noise.
- (g) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupiers of neighbouring noise sensitive property to a minimum.
- (h) What plant and equipment is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on the occupiers of neighbouring property and other less intrusive technologies available.

**(60) LANDSCAPING OF THE SITE**

- (a) A detailed landscape plan, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted to and approved by Council's Area Planning Manager prior to the issue of a Construction Certificate for above ground building works. The plan must be largely in accordance with drawings 1402-DA02 to DA07, dated 27 February 2015, and must include:
  - (i) Location of existing and proposed structures on the site including, but not limited to, existing and proposed trees, paved areas, planted areas on slab, planted areas in natural ground, lighting and other features;
  - (ii) Details of earthworks and soil depths including mounding and retaining walls and planter boxes (if applicable). The minimum soil depths for planting on slab must be 1000mm for trees, 450mm for shrubs and 200mm for groundcovers;
  - (iii) Location, numbers, type and supply of plant species, with reference to NATSPEC (if applicable);
  - (iv) Details of planting procedure and maintenance; and
  - (v) Details of drainage, waterproofing and watering systems.

- (b) Prior to the issue of a Construction Certificate, a maintenance plan is to be submitted to and approved by the Principal Certifying Authority. The maintenance plan is to be complied with during occupation of the property.
- (c) All landscaping in the approved plan is to be completed prior to an Occupation Certificate being issued.

**(61) ALIGNMENT LEVELS – MAJOR DEVELOPMENT**

- (a) Proposed building floor levels, basement levels, basement car park entry levels and ground levels shown on the approved Development Application plans are indicative only and have not been approved by this consent.
- (b) Prior to a Construction Certificate being issued for any excavation, civil construction, drainage or building work (whichever is earlier), excluding approved preparatory or demolition work, alignment levels for the building and site frontages must be submitted to and approved by Council. The submission must be prepared by a Registered Surveyor, must be in accordance with the City of Sydney's *Public Domain Manual* and must be submitted with a completed Alignment Levels checklist (available in the *Public Domain Manual*) and Footpath Levels and Gradients Approval Application form (available on the City's website).
- (c) These alignment levels, as approved by Council, are to be incorporated into the plans submitted with the application for a Construction Certificate for any civil, drainage and public domain work as applicable under this consent. If the proposed detailed design of the public domain requires changes to any previously approved Alignment Levels, then an amended Alignment Levels submission must be submitted to and approved by Council to reflect these changes prior to a Construction Certificate being issued for public domain work.

**(62) PHOTOGRAPHIC RECORD / DILAPIDATION REPORT - PUBLIC DOMAIN**

Prior to an approval for demolition being granted or a Construction Certificate being issued, whichever is earlier, a photographic recording of the public domain site frontages is to be prepared and submitted to Council's satisfaction.

The recording must include clear images of the building facade adjoining the footpath, the footpath, nature strip, kerb and gutter, driveway crossovers and laybacks, kerb ramps, road carriageway, street trees and plantings, parking restriction and traffic signs, and all other existing infrastructure along the street.

The form of the recording is to be as follows:

- (a) A PDF format report containing all images at a scale that clearly demonstrates the existing site conditions;
- (b) Each image is to be labelled to identify the elements depicted, the direction that the image is viewed towards, and include the name of the relevant street frontage;



- (c) Each image is to be numbered and cross referenced to a site location plan;
- (d) A summary report, prepared by a suitable qualified professional, must be submitted in conjunction with the images detailing the project description, identifying any apparent existing defects, detailing the date and authorship of the photographic record, the method of documentation and limitations of the photographic record;
- (e) Include written confirmation, issued with the authority of both the applicant and the photographer that the City of Sydney is granted a perpetual non-exclusive license to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images. The signatures of both the applicant and the photographer must be included.

Any damage to the public way including trees, footpaths, kerbs, gutters, road carriageway and the like must immediately be made safe and functional by the applicant. Damage must be fully rectified by the applicant in accordance with the City's standards prior to a Certificate of Completion being issued for Public Domain Works or before an Occupation Certificate is issued for the development, whichever is earlier.

#### **(63) PRESERVATION OF SURVEY MARKS**

All works in City streets must ensure the preservation of existing permanent survey marks (a brass bolt, or a lead plug holding a brass tack, covered by a cast iron box). At least forty-eight hours prior to the commencement of any works in the public way within 1 metre of a permanent survey mark contact must be made with the City's Project Manager Survey / Design Services to arrange for the recovery of the mark.

Prior to the issue of a Construction Certificate, a survey plan, clearly showing the location of all permanent survey marks fronting the site and within 5 metres on each side of the frontages must be submitted to Council.

At least forty-eight hours prior to the commencement of any works in the public way within 1 metre of a permanent survey mark contact must be made with the City's Senior Surveyor to arrange for the recovery of the mark.

A fee must be paid to the Council for the replacement of any permanent survey mark removed or damaged in accordance with the City's Schedule of Fees and Charges (Reinstatement of Survey Box).

#### **(64) PROTECTION OF SURVEY INFRASTRUCTURE**

Prior to the commencement of any work on site, a statement prepared by a Surveyor registered under the *Surveying Act 2002* must be submitted to Council verifying that a survey has been carried out in accordance with the Surveyor General's Direction No. 11 – Reservation of Survey Infrastructure. Any Permanent Marks proposed to be or have been destroyed must be replaced, and a "Plan of Survey Information" must be lodged at the Land and Property Management Authority.

Reason: To ensure that the survey control infrastructure and cadastral framework are preserved for the public benefit and in accordance with the *Surveying Act 2002*.

**(65) PUBLIC DOMAIN PLAN**

- (a) A detailed Public Domain Plan must be prepared by a suitably qualified architect, urban designer, landscape architect or engineer and must be lodged with Council's Public Domain Section and be approved by the Director City Planning, Development and Transport prior to a Construction Certificate being issued for public domain work or above ground building work, whichever is later. The Public Domain Plan must be submitted with a completed Public Domain Plan checklist (available in the City of Sydney's *Public Domain Manual*).
- (b) The Public Domain Plan must document all works required to ensure that the public domain complies with the City of Sydney's *Public Domain Manual*, *Sydney Streets Design Code* and *Sydney Streets Technical Specification*, including requirements for road pavement, traffic measures, footway pavement, kerb and gutter, drainage, vehicle crossovers, pedestrian ramps, lighting, street trees and landscaping, signage and other public domain elements. If an Alignment Levels condition applies to the development, the Public Domain Plan submission must incorporate the approved Alignment Levels. If the proposed detailed design of the public domain requires changes to any previously approved Alignment Levels, then an amended Alignment Levels submission must be submitted to and approved by Council to reflect these changes prior to a Construction Certificate being issued for public domain work.
- (c) The works to the public domain are to be completed in accordance with the approved Public Domain Plan and Alignment Levels plans and the *Public Domain Manual* before any Occupation Certificate is issued in respect of the development or before the use commences, whichever is earlier.
- (d) A Public Domain Works Deposit will be required for the public domain works, in accordance with the City of Sydney's adopted fees and charges and the *Public Domain Manual*. The Public Domain Works Deposit must be submitted as an unconditional bank guarantee in favour of Council as security for completion of the obligations under this consent.
- (e) Council's Public Domain section must be contacted to determine the guarantee amount prior to lodgement of the guarantee. The guarantee must be lodged with Council prior to a Construction Certificate being issued.
- (f) The Bank Guarantee will be retained in full until all Public Domain works are completed and the required certifications, warranties and works-as-executed documentation are submitted and approved by Council in writing. On satisfying the above requirements, 90% of the total securities will be released. The remaining 10% will be retained for the duration of the specified Defects Liability Period.

**(66) PUBLIC DOMAIN WORKS - HOLD POINTS AND HANDOVER**

- (a) Prior to a Construction Certificate being issued for public domain work, including civil, drainage and subsurface works, a set of hold points for approved public domain, civil and drainage work is to be determined with and approved by the City's Public Domain section in accordance with the City of Sydney's *Public Domain Manual* and *Sydney Streets Technical Specification*.
- (b) Prior to a Certificate of Completion being issued for public domain works and before the issue of any Occupation Certificate for the development or before the use commences, whichever is earlier, electronic works-as-executed (as-built) plans and documentation, certified by a suitably qualified, independent professional must be submitted to and accepted by Council for all public domain works. Completion and handover of the constructed public domain works must be undertaken in accordance with the City of Sydney's *Public Domain Manual* and *Sydney Streets Technical Specification*, including requirements for as-built documentation, certification, warranties and the defects liability period.

**(67) STORMWATER AND DRAINAGE - MAJOR DEVELOPMENT**

- (a) Prior to a Construction Certificate being issued for any excavation, civil construction, drainage or building work (whichever is earlier), excluding approved preparatory or demolition work, details of the proposed stormwater disposal and drainage from the development including a system of on-site stormwater detention in accordance with Council's standard requirements and details of the provision and maintenance of overland flow paths must be submitted to and approved by Council. All approved details for the disposal of stormwater and drainage are to be implemented in the development.
- (b) The requirements of Sydney Water with regard to the on site detention of stormwater must be ascertained and complied with. Evidence of the approval of Sydney Water to the on-site detention must be submitted prior to a Construction Certificate being issued excluding any approved preparatory, demolition or excavation works.
- (c) Prior to the issue of any Occupation Certificate, a Positive Covenant must be registered on the title for all drainage systems involving On-Site Detention (OSD) to ensure maintenance of the approved OSD system regardless of the method of connection.
- (d) Any proposed connection to the Council's underground drainage system will require the owner to enter into a Deed of Agreement with the Council and obtain registration on Title of a Positive Covenant prior to Construction Certificate being issued for public domain works or above ground building works, whichever is earlier, and prior to the commencement of any work within the public way.

**Note: Contact Council's Legal Unit prior to the drafting of the positive covenant.**

- (e) An "Application for Approval of Stormwater Drainage Connections" must be submitted to the Council with the appropriate fee at the time of lodgement of the proposal for connection of stormwater to the Council's drainage system.

The stormwater quality assessment must:

- (i) be prepared by a suitably qualified drainage engineer with experience in Water Sensitive Urban Design;
- (ii) use modelling from an industry-standard water quality model; and
- (iii) demonstrate what water sensitive urban design and other drainage measures will be used to ensure that the development will achieve the following post-development pollutant loads:
  - a. reduce the baseline annual pollutant load for litter and vegetation larger than 5mm by 90%;
  - b. reduce the baseline annual pollutant load for total suspended solids by 85%;
  - c. reduce the baseline annual pollutant load for total phosphorous by 65%;
  - d. reduce the baseline annual pollutant load for total nitrogen by 45%.

Prior to the issue of any Occupation Certificate, maintenance schedules of the proposed water sensitive urban design and drainage measures must be submitted to and approved by the Certifying Authority and a copy provided to Council.

#### **(68) DEFECTS LIABILITY PERIOD – PUBLIC DOMAIN WORKS**

All works to the City's public domain, including rectification of identified defects, are subject to a 12 month defects liability period from the date of final completion. The date of final completion will be nominated by Council on the Certificate of Completion for public domain works.

#### **(69) DRAINAGE AND SERVICE PIT LIDS**

Drainage and service pit lids throughout the public domain shall be heelguard and bicycle safe, finish flush with the adjacent pavement to avoid trip hazards and be clear of obstructions for easy opening and cleaning. Pit lids shall be in accordance with the *City of Sydney's Sydney Streets Design Code* and *Sydney Streets Technical Specification*. Details of drainage and service pit lids shall be submitted and approved by Council prior to a Construction Certificate being issued for the relevant stage of work.

#### **(70) PROTECTION OF STONE KERBS**

- (a) The existing stone kerbs on the Victoria Street and Darlinghurst Road frontage(s) of the site are to be retained and properly protected during excavation and construction works.

- (b) To avoid damage to stone kerbs during excavation and construction works for the development, temporary removal and storage of the stone kerbs may be approved by Council. Removed, serviceable stone kerbs (i.e. those that are in good condition as agreed by Council officers) must be re-installed in accordance with the City of Sydney's standard details and specifications after the construction works have been completed. Note: A temporary concrete kerb will need to be constructed to retain the footpath until the stone kerbs can be reinstalled. The removed stone kerbs are to be reinstalled prior to the issue of an Occupation Certificate. Note: all costs associated with the works are to be at no cost to the Council.
- (c) Damaged kerbs are to be replaced to match existing to Council's satisfaction or as otherwise advised by Council officers.
- (d) Where new crossings or temporary crossings are to be constructed to access the property, the affected kerb stones should be salvaged and reused wherever possible.
- (e) All new driveway laybacks and kerbs are to be constructed with stone kerbs to match existing stones or as specified by City officers. All unused stone kerbs are to be salvaged and returned to the City's store.
- (f) Council approval is required before kerbs are removed.
- (g) Council approval is required prior to the cutting of existing stone kerbs for stormwater kerb outlets.

#### **(71) PUBLIC DOMAIN LIGHTING**

- (a) Prior to a Construction Certificate for public domain works or above ground building works being issued, whichever is later, a detailed Public Domain Lighting Plan for pedestrian and street lighting in the public domain must be prepared by a suitably qualified, practicing lighting engineer or lighting designer and must be submitted to and approved by Council. The Lighting Plan must be prepared in accordance with the City of Sydney's Interim Draft Sydney Lights Design Code, Sydney Streets Design Code, *Sydney Streets Technical Specification* and *Public Domain Manual* and must include the following:
  - (i) Vertical and horizontal illuminance plots for the public domain lighting design to demonstrate compliance with all relevant Australian Standards and to meet the lighting categories and requirements specified by the City;
  - (ii) The location, type and category of existing and proposed lights, including details of luminaire specifications, required to ensure compliance with City policies and Australian Standards;
  - (iii) Footing locations and structural details;
  - (iv) Location and details of underground electrical reticulation, connections and conduits;

- (v) Certification by a suitably qualified, practicing lighting engineer or lighting designer to certify that the design complies with City policies and all relevant Australian Standards including AS 1158, AS 3000 and AS4282;
  - (vi) Structural certification for footing designs by a suitably qualified, practicing engineer to certify that the design complies with City of Sydney policies and Australian Standards.
- (b) The public domain lighting works are to be completed in accordance with the approved plans and the City of Sydney's *Public Domain Manual* before any Occupation Certificate is issued in respect of the development or before the use commences, whichever is earlier.

#### **(72) PUBLIC DOMAIN DAMAGE DEPOSIT**

A Public Domain Damage Deposit must be lodged with Council in accordance with the City of Sydney's adopted Schedule of Fees and Charges. The Public Domain Damage Deposit must be submitted as an unconditional bank guarantee in favour of Council as security for repairing any damage to the public domain in the vicinity of the site.

The guarantee must be lodged with Council prior to an approval for demolition being granted or a Construction Certificate being issued, whichever is earlier.

The Bank Guarantee will be retained in full until the final Occupation Certificate has been issued and any rectification works to the footway and Public Domain are completed to Council's satisfaction. On satisfying the above requirements 90% of the total securities will be released, with the remaining 10% to be retained for the duration of the 12 months Defect Liability Period.

#### **(73) TACTILE GROUND SURFACE INDICATORS AND HANDRAILS**

All tactile ground surface indicators, handrails and other elements required to provide access into the building / property must be located entirely within the private property boundary.

#### **(74) MECHANICAL VENTILATION**

- (a) The premises must be ventilated in accordance with the *Building Code of Australia* and AS1668.1 and AS1668.2.
- (b) Details of any mechanical ventilation and/or air conditioning system complying with AS1668.1 and AS1668.2, the *Building Code of Australia* and relevant Australian Standards must be prepared by a suitably qualified person certified and certified in accordance with Clause A2.2(a)(iii) of the *Building Code of Australia*, to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.
- (c) Prior to issue of an Occupation Certificate and following the completion, installation, and testing of all the mechanical ventilation systems, a Mechanical Ventilation Certificate of Completion and Performance in accordance with Clause A2.2(a)(iii) of the *Building Code of Australia*, must be submitted to the Principal Certifying Authority.

**(75) FUTURE FOOD USE - MECHANICAL VENTILATION PROVISION**

The approved mechanical exhaust systems are to be designed to be capable of accommodating exhaust requirements for all retail tenancies in accordance with relevant Australia Standards, in order to allow for the event that any of the tenancies are approved for future use by food premises or other uses which require mechanical exhaust. Any exhaust system servicing an area where food is being cooked must discharge exhaust air at roof level.

**(76) MICROBIAL CONTROL IN WATER SYSTEMS**

- (a) Prior to the issue of a Construction Certificate, detailed plans of any water cooling system (including cooling towers) as defined under the *Public Health Act 2010* must be prepared by a suitably qualified person and certified in accordance with AS3666: 1: 2011 Air handling and water systems of buildings – Microbial Control – Design, installation and commissioning and must be submitted to and approved by Council.
- (b) Water cooling system operation and maintenance manuals and maintenance service records shall be readily available at the premises for inspection by an authorised officer upon request. Such records must be kept on the premises in accordance with Clause 2.6 to AS/NZS 3666:2:2011 Air handling and water systems of buildings – Microbial control, operation and maintenance.
- (c) The installation, operation and maintenance of warm water systems and water cooling systems (as defined under the *Public Health Act 2010*) must comply with the following:
  - (i) *Public Health Act 2010*, Public Health Regulation 2012 and Parts 1 and 2 (or part 3 if a Performance-based water cooling system) of AS3666:2011 Air handling and water systems of buildings – Microbial Control and the NSW Health Code of Practice for the Control of Legionnaires Disease.
  - (ii) Prior to the issue of an Occupation Certificate or if non applicable, prior to commencement of the use, the owner or occupier of the premises at which any warm water system and/or water cooling system is installed must cause notice of such installation(s) by providing to Council's Environmental Health department, written notification by way of the prescribed form under Clause 12 to the Public Health Regulation 2012. Any changes to these particulars must be notified to Council's Environmental Health department in writing within 7 days of the change(s). Copies of the notification forms are available on the City of Sydney website.

**(77) CAR PARK VENTILATION**

The car park must be ventilated in accordance with the *Building Code of Australia* and, where necessary, Australian Standard AS1668, Parts 1 and 2. Ventilation must be controlled by carbon monoxide monitoring sensors to ensure compliance with occupant health requirements.

**(78) CONSTRUCTION AND FITOUT OF FOOD PREMISES**

The construction, fitout and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the *Food Act 2003* and AS 4674 – 2004 Design, Construction and Fitout of Food Premises.

Note: Copies of AS 4674-2004 may be obtained from the Standards Australia Customer Service on telephone 1300 65 46 46 or by visiting the website [www.standards.com.au](http://www.standards.com.au).

Copies of the Food Standards Code (Australia) may be obtained by contacting the Food Standards Australia and New Zealand Authority on telephone (02) 6271 2222, email [info@foodstandards.gov.au](mailto:info@foodstandards.gov.au) or by visiting the website [www.foodstandards.gov.au](http://www.foodstandards.gov.au).

**(79) COOKING EQUIPMENT AND VENTILATION**

Cooking must not commence until an air handling system, in accordance with Part F4.12 of the BCA is approved, installed and operational. Cooking is defined as the process of changing any food from raw to cooked by applying heat, and also includes the preparation of food by heating it. This definition does not include heating food in a microwave, a sandwich press, a toaster or similar, unless the kW or MJ combined or separate exceed that specified in the BCA, or if the use of such equipment generates excessive heat, condensation or grease. Cooking equipment that requires an air handling system is specified in AS1668.2 and BCA F4.12.

**(80) COOLROOMS**

Cool room(s), refrigerated chambers and strong-rooms are to be constructed in accordance with G 1.2 of the *Building Code of Australia*:

- (a) The floor of the coolroom must be graded to the door and a floor trapped waste outlet must be located outside the coolroom as near as possible to the door opening.
- (b) All proposed shelving in the coolroom must be free-standing, constructed of galvanised steel angle section or other approved material with the lowest shelf at least 150mm clear of the floor.
- (c) The floor of the coolroom must be constructed of impermeable concrete or coated, topped or otherwise finished with an impervious material to a smooth even surface and coved at the intersections with the walls to a minimum radius of 25mm.
- (d) A door which can be opened at all times from inside without a key.
- (e) An approved audible alarm device must be located outside the coolroom(s) but controllable only from within the coolroom(s) and be able to achieve a sound pressure level outside the chamber or coolroom(s) of 90 d B (A) when measured 3 metres from the sounding device.



**(81) DETAILED PLANS OF FOOD FITOUT REQUIRED**

Detailed plans of the kitchen, bar and food preparation and storage areas must be prepared by a suitably qualified person and certified in accordance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the *Food Act 2003* and AS 4674 - Design, Construction and Fitout of Food Premises and must be submitted to and approved by Council prior to a Construction Certificate being issued.

**(82) FOOD PREMISES - HEALTH DATABASE REGISTRATION**

The business is to be registered with Council's Health and Building Unit prior to the issue of an Occupation Certificate or occupation with an Interim Occupation Certificate (whichever is earlier).

Note: Registration forms are available on Council's website [www.cityofsydney.nsw.gov.au](http://www.cityofsydney.nsw.gov.au).

**(83) GREASE TRAPS**

A grease trap (if required by Sydney Water) must not be installed in any kitchen, food preparation or food storage area. The grease trap room must have a piped connection to the boundary so that it can be emptied. Note: Sydney Water Authority also have requirements for grease arrestors that you need to comply with.

**(84) NO MECHANICAL VENTILATION – APPROVED EQUIPMENT LIST**

The food business must submit to and gain approval from Council's Health and Building Unit, prior to the issue of an Occupation Certificate, the following:

- (a) A list detailing each item of cooking and heating equipment to be used within the premises including the maximum kW or MJ capacity of each. (To be known as the approved list). A copy of the approved list must be kept on the premises and be made available to any authorised officer of Council upon request.
- (b) The use of any cooking or heating appliance not listed on the approved list is prohibited.

Amendments to the approved list can be made subject to a written request to and approval from Council's Health and Building Unit.

**(85) SANITARY FACILITIES – FOOD PREMISES**

The sanitary facilities must be separated from all food handling areas via an airlock, self-closing door or mechanical ventilation in accordance with the provisions of the *Building Code of Australia*, Part F 3.1, 4.8 and 4.9.

**(86) WASTE ROOMS**

- (a) To ensure the adequate storage and collection of waste from the occupation or the use of the food premises, all garbage and recyclable materials emanating from the premises must be stored in a designated waste storage area. The waste storage area must be designed and constructed in accordance with AS 4674 – Design, Construction and Fitout of Food Premises, and must be:
  - (i) Provided with a hose tap connected to the water supply;
  - (ii) Paved with impervious floor materials;
  - (iii) Coved at the intersection of the floor and walls;
  - (iv) Graded and drained to a waste disposal system in accordance with the relevant regulatory authority (Sydney Water);
  - (v) Adequately ventilated (mechanically or naturally) so that odour emissions do not cause offensive odour as defined by the *Protection of the Environment Operations Act 1997*;
  - (vi) Fitted with appropriate interventions to meet fire safety standards in accordance with the *Building Code of Australia*.
- (b) Detailed plans and specifications for the construction of the waste storage area are to be submitted to the Certifying Authority with the Construction Certificate.

**(87) ASBESTOS REMOVAL WORKS**

- (a) All works removing asbestos containing materials must be carried out by a suitably licensed asbestos removalist duly licensed with Workcover NSW, holding either a Friable (Class A) or a Non- Friable (Class B) Asbestos Removal Licence whichever applies.
- (b) Five days prior to the commencement of licensed asbestos removal, WorkCover must be formally notified of the works. All adjoining properties and those opposite the development must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone number and email address.
- (c) All works must be carried out in accordance with the *Work Health and Safety Regulation 2011* and the NSW Government and WorkCover document entitled *How to manage and control asbestos in the work place: Code of Practice (NSW WorkCover)* and the *City of Sydney Managing Asbestos Policy*.

- (d) The asbestos removalist must use signs and barricades to clearly indicate the area where the asbestos removal work is being performed. Signs must be placed in positions so that people are aware of where the asbestos removal work area is and should remain in place until removal is completed and clearance to reoccupy has been granted. Responsibilities for the security and safety of the asbestos removal site and removal work area should be specified in the asbestos removal control plan (where required). This includes inaccessible areas that are likely to contain asbestos.
- (e) Warning signs must be placed so they inform all people nearby that asbestos removal work is taking place in the area. Signs should be placed at all of the main entry points to the asbestos removal work area where asbestos is present. These signs should be weatherproof, constructed of light-weight material and adequately secured so they remain in prominent locations. The signs should be in accordance with AS 1319-1994 Safety signs for the occupational environment for size, illumination, location and maintenance.
- (f) Asbestos to be disposed of must only be transported to waste facilities licensed to accept asbestos. The names and location of these facilities are listed in Appendix F of the City of Sydney's Managing Asbestos Guidelines.
- (g) No asbestos products are to be reused on the site (i.e. packing pieces, spacers, formwork or fill etc).
- (h) No asbestos laden skips or bins are to be left in any public place without the approval of Council.
- (i) A site notice board must be located at the main entrance to the site in a prominent position and must have minimum dimensions of 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size.

The site notice board must include the following:

- (i) contact person for the site;
- (ii) telephone and facsimile numbers and email address; and
- (iii) site activities and time frames.

## **(88) CLASSIFICATION OF WASTE**

Prior to the exportation of waste (including fill or soil) from the site, the waste materials must be classified in accordance with the provisions of the Protection of the *Environment Operations Act 1997* and the *NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (July 2009)*. The classification of the material is essential to determine where the waste may be legally taken. The *Protection of the Environment Operations Act 1997* provides for the commission of an offence for both the waste owner and the transporters if the waste is taken to a place that cannot lawfully be used as a waste facility for the particular class of waste. For the transport and disposal of industrial, hazardous or Group A liquid waste advice should be sought from the EPA.

**(89) ADAPTABLE HOUSING**

Prior to a Construction Certificate being issued, information from an appropriately qualified access consultant:

- (a) Confirming that the required number of residential units are able to be adapted for people with a disability in accordance with the *Building Code of Australia*.
- (b) Demonstrating (in a checklist) compliance with Australian Standard AS4299,

is to be submitted to the Certifying Authority.

**(90) WASTE MANAGEMENT FACILITIES**

Prior to the issue of a Construction Certificate for the development, the waste management facilities within the building are to be consistent with Council's "Policy for Waste Minimisation in New Developments 2005" and designed to provide for:

- (a) a receptacle holding area is to be provided within the property boundary at street level, within 10m of and at the same level as the standing area for Council's waste collection vehicle on Victoria Street adjoining the site for waste collection purposes,
- (b) the residential garbage room to be designed in accordance with Council's "Policy for Waste Minimisation in New Developments 2005" to allow for cleaning, draining and management of the room,
- (c) the physical separation of residential waste from that generated by the commercial tenancy which is to be collected by a private contractor.

**(91) BCA COMPLIANCE - ALTERATIONS AND ADDITIONS - UPGRADE OF BUILDING IS REQUIRED**

- (a) Pursuant to Clause 94 of the Environmental Planning and Assessment Regulation 2000, the whole building must comply with the *Building Code of Australia* (BCA) including:
  - (i) Structural provisions - Part B1;
  - (ii) Fire resistance and stability - Part C1;
  - (iii) Compartmentation and separation - Part C2;
  - (iv) Protection of openings - Part C3;
  - (v) Provision for escape (access and egress) - Part D1;
  - (vi) Construction of exits - Part D2;
  - (vii) Access for people with disabilities - Part D3;

Note: Compliance with the access provisions of Part D3 may necessitate design modifications prior to a Construction Certificate being issued.

- (viii) Fire fighting equipment - Part E1;
- (ix) Smoke hazard management - Part E2;
- (x) Lift installation - Part E3;
- (xi) Emergency lighting, exit signs and warning systems - Part E4;
- (xii) Damp and weatherproofing - Part F1;
- (xiii) Sanitary and other facilities - Part F2;

Note: For restaurants, cafes, bars and the like, sanitary facilities (including accessible facilities for persons with disabilities complying with AS 1428.1) must be provided for customers where more than 20 seats are provided, including seating for any future footway dining facilities.

- (xiv) Room sizes - Part F3;
- (xv) Light and ventilation - Part F4;
- (xvi) Sound transmission and insulation - Part F5;
- (xvii) Heating appliances, fireplaces, chimneys and flues - Part G2;
- (xviii) Atrium construction - Part G3;
- (xix) Places of public entertainment - NSW Part H101;
- (xx) Energy Efficiency - Building Fabric - Part J1;
- (xxi) Energy Efficiency - External glazing - Part J2;
- (xxii) Energy Efficiency - Building sealing - Part J3;
- (xxiii) Energy Efficiency - Air-conditioning and ventilation systems - Part J5;
- (xxiv) Energy Efficiency - Artificial lighting and power - Part J6;
- (xxv) Energy Efficiency - Hot water supply - Part J7;
- (xxvi) Energy Efficiency - Access for maintenance - Part J8.

Prior to a Construction Certificate being issued the Certifying Authority must ensure that the proposed works and other upgrading works required by this condition satisfy the *Building Code of Australia* by complying with Clause A0.4 of the BCA.

**(92) STRUCTURAL CERTIFICATION FOR DESIGN – BCA (ALL BUILDING CLASSES)**

Prior to the issue of a Construction Certificate, structural details and a Structural Certificate for Design by a qualified practising structural engineer and in accordance with Clause A2.2(a)(iii) of the Building Code of Australia (applicable to Class 2-9 buildings) and Clause 1.2.2(iii) of Volume 2 of the BCA (applicable to Class 1 and 10 buildings) must be submitted to the satisfaction of Council (where Council is the Certifying Authority).

**(93) STRUCTURAL CERTIFICATION FOR EXISTING BUILDING – ALTERATIONS AND ADDITIONS**

A qualified practising certified structural engineer must provide structural certification to Council (where Council is the Certifying Authority) verifying that the existing structure can adequately support the proposed new loads and the structural design complies with the Structural Provisions of Part B1 (Vol 1) and Part 2.1 (Vol 2) of the Building Code of Australia prior to a Construction Certificate being issued. The proposed additional loads and/or alterations must not cause a decrease in the existing structural performance of the building including its performance under earthquake actions (AS1170.4).

**(94) BASIX CERTIFICATE – DETAILS TO BE LODGED WITH A CC**

A copy of the required completed BASIX certificate accepted as part of this Development Consent with respect to the proposed residential building works, must be lodged with an application for a construction certificate and the items nominated as part of the subject BASIX certificate must be specified on the plans submitted with the construction certificate application. – See Note.

**IMPORTANT NOTE:**

Any requirement detailed in the accompanying BASIX Certificate, MUST be included as a specific notation or inclusion on any future Construction Certificate plans and specification in accordance with Part 3 of Schedule 1 of the EP&A Regulation, 2000.

**(95) ANNUAL FIRE SAFETY STATEMENT FORM**

An annual Fire Safety Statement must be given to Council and the NSW Fire Brigade commencing within 12 months after the date on which the initial Interim/Final Fire Safety Certificate is issued or the use commencing, whichever is earlier.

**(96) OPERATING HOISTING DEVICES INCLUDING BUILDING MAINTENANCE UNITS OVER A PUBLIC ROAD**

If it is proposed to install a building maintenance unit or operate a hoisting device above a road (footpath) including swinging, hoisting material/equipment and slewing any part of the device, a separate application under Section 68 of the *Local Government Act 1993* and Section 138 of the *Roads Act 1993* must be made to Council to obtain approval.

Note: Building maintenance unit means a power operated suspended platform and associated equipment on a building specifically designed to provide permanent access to the faces of the building for maintenance (*Work Health and Safety Regulation 2011*).

**(97) SYDNEY TRAINS REQUIREMENTS**

The following requirements of Sydney Trains are required to be met:

- (a) Prior to the issue of a Construction Certificate the applicant shall submit to Sydney Trains for endorsement a revised survey drawing showing all off-corridor rail services (obtained via a services search) that are in the vicinity of the proposed development. All information contained on the revised survey plans are to be also included on all structural drawings. Persons performing the services search shall use equipment that will not have any impact on rail services and signalling. The Principal Certifying Authority is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.
- (b) Prior to the issue of a Construction Certificate the applicant shall submit to Sydney Trains for endorsement a Final Geotechnical Ground Investigation Report. Notwithstanding the notation on the structural drawings prepared by Taylor Thomson Whitting (TTW) that this investigation is to be conducted between Gridlines 1 and 4, the geotechnical investigation is to be undertaken in the area within 25m of the rail corridor. The Applicant shall obtain approval from Sydney Trains prior to the undertaking of any boreholes. The Applicant shall provide a Geotechnical Engineering report to Sydney Trains for review by Sydney Trains's Geotechnical section prior to the commencement of works. The Principal Certifying Authority is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.
- (c) The following items are to be submitted to Sydney Trains for review and endorsement prior to the issuing of Construction Certificate:
  - (i) Final Structural Drawings prepared by Taylor Thomson Whitting Consulting Engineers (including cross-section drawings). The structural details are to take into account any recommendations from an acoustic expert regarding noise and vibration impacts from the rail tunnel.
  - (ii) Detailed Methodology regarding the installation of new footings.
  - (iii) Details regarding the new loading on the rail tunnels/infrastructure as a result of the new works.
  - (iv) If required by Sydney Trains, a numerical analysis that assess the change in ground movement or loading on the rail tunnel.
  - (v) If required by Sydney Trains, a Ground Movement Monitoring Plan of the existing tunnels and/or Risk Assessment Report

The Principal Certifying Authority is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.

- (d) Prior to any Construction Certificate, the Applicant is to submit to Sydney Trains a plan showing all craneage (including mobile cranes) and other aerial operations to be used during all stages of work. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.
- (e) All excavation/ground penetration works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects. All footings are to be inspected by the geotechnical engineer to confirm design assumptions.
- (f) Details of machinery to be used during works shall be provided to Sydney Trains for review and endorsement. Prior to the commencement of works the Principal Certifying Authority is to provide verification to Sydney Trains that this condition has been complied with.
- (g) No rock anchors/bolts are to be installed into Sydney Trains property or easement.
- (h) The Applicant is to submit to Council, for its records, copies of any certificates, drawings or approvals given to or issued by Sydney Trains.
- (i) If required by Sydney Trains, prior to the commencement of works and prior to the issue of the Occupation Certificate, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains.
- (j) If required by Sydney Trains, prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.
- (k) An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines".



- (l) If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- (m) If required by Sydney Trains, prior to the issue of a Construction Certificate the Applicant must hold current public liability insurance cover for a sum to be determined by Sydney Trains. This insurance shall not contain any exclusion in relation to works on or near the rail corridor. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.
- (n) If required by Sydney Trains, Prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Rail Corridor Management Group to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.
- (o) The Applicant is to obtain Sydney Trains endorsement prior to the installation of any hoarding or scaffolding facing the common boundary with the rail corridor.
- (p) If required by Sydney Trains, prior to the issue of a Construction Certificate the Applicant is to submit to Sydney Trains the methodology and staging of the works for review and endorsement. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- (q) Prior to the issuing of an Occupancy Certificate the Applicant shall provide Sydney Trains and Council as-built drawings and survey locating the development with respect to any rail boundary, Sydney Trains easement and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction of Sydney Trains's representative. The as-built survey is to confirm that there has been no encroachment into any Sydney Trains land or easement area.
- (r) Where a condition of consent requires Sydney Trains endorsement the Principal Certifying Authority is not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from Sydney Trains that the particular condition has been complied with.

**(98) MINIMISE IMPACT OF POOL ON NEIGHBOURING PROPERTIES**

- (a) To minimise the impact of the pool on adjoining properties and to ensure the safety of the pool/spa area, the design and construction of the swimming pool/spa and associated equipment and fencing must comply with the following requirements:
- (i) The *Swimming Pools Act 1992* and Regulations;
  - (ii) The swimming pool must have safety barriers installed in accordance with the requirements of AS 1926.1 - 2007 - 'Safety barriers for swimming pools' and AS 1926.2 - 2007 'Location of safety barriers for swimming pools';
  - (iii) Australian Standards 1926.3 - Water Recirculation and Filtration; and
  - (iv) *Protection of the Environment Operations Act 1997*.

**(99) SWIMMING POOL - WASTE AND OVERFLOW WATERS**

Swimming pool waste and overflow waters must be collected and directed to the sewer in accordance with the requirements of Sydney Water, and details are to be submitted with the application for a Construction Certificate to the satisfaction of Council or the accredited certifier and approved by the Certifying Authority.

**(100) SWIMMING POOL/SPA**

Swimming and/or spa pool/s and pool surrounds must be maintained in accordance with the *Public Health (General) Regulation 2012*. Note: Guidance may also be obtained from the NSW Health Department's *Public Swimming Pool and Spa Pool Guidelines*.

**SCHEDULE 1C****During Construction/Prior to Occupation/Completion****(101) HOURS OF WORK AND NOISE – OUTSIDE CBD**

The hours of construction and work on the development must be as follows:

- (a) All work, including building/demolition and excavation work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (eg. loading and unloading of goods, transferring of tools etc) in connection with the proposed development must only be carried out between the hours of 7.30am and 5.30pm on Mondays to Fridays, inclusive, and 7.30am and 3.30pm on Saturdays, with safety inspections being permitted at 7.00am on work days, and no work must be carried out on Sundays or public holidays.
- (b) All work, including demolition, excavation and building work must comply with the City of Sydney Code of Practice for Construction Hours/Noise 1992 and Australian Standard 2436 - 2010 Guide to Noise Control on Construction, Maintenance and Demolition Sites.

Note: Works may be undertaken outside of hours, where it is required to avoid the loss of life, damage to property, to prevent environmental harm and/or to avoid structural damage to the building. Written approval must be given by the Construction Regulation Unit, prior to works proceeding.

The *City of Sydney Code of Practice for Construction Hours/Noise 1992* allows extended working hours subject to the approval of an application in accordance with the Code and under Section 96 of the *Environmental Planning and Assessment Act 1979*.

#### **(102) USE OF INTRUSIVE APPLIANCES – NOT APPROVED**

This development consent does not extend to the use of appliances which emit noise of a highly intrusive nature (such as pile - drivers and hydraulic hammers) or are not listed in Groups B, C, D, E or F of Schedule 1 of the *City of Sydney Code of Practice for Construction Hours/Noise 1992*”.

A separate Section 96 application must be submitted to the Council for the use of any equipment of a highly intrusive nature (such as pile - drivers and hydraulic hammers) or are not listed in Groups B, C, D, E or F of Schedule 1 of the *City of Sydney Code of Practice for Construction Hours/Noise 1992*.

#### **(103) OCCUPATION CERTIFICATE TO BE SUBMITTED**

An Occupation Certificate must be obtained from the Principal Certifying Authority and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.

#### **(104) NO OBSTRUCTION OF PUBLIC WAY**

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by Council to stop all work on site.

#### **(105) LOADING AND UNLOADING DURING CONSTRUCTION**

The following requirements apply:

- (a) All loading and unloading associated with construction activity must be accommodated on site.
- (b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- (c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.

- (d) In addition to any approved construction zone, provision must be made for loading and unloading to be accommodated on site once the development has reached ground level.
- (e) The structural design of the building must allow the basement and/or the ground floor to be used as a loading and unloading area for the construction of the remainder of the development.
- (f) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval under Section 68 of the Local Government Act 1993 must be obtained.

#### **(106) USE OF MOBILE CRANES**

The following requirements apply:

- (a) Mobile cranes operating from the road must not be used as a method of demolishing or constructing a building.
- (b) For special operations including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on site tower cranes which warrant the on-street use of mobile cranes, permits must be obtained from Council for the use of a mobile crane. The permits must be obtained 48 hours beforehand for partial road closures which, in the opinion of Council will create minimal traffic disruptions and 4 weeks beforehand in the case of full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.
- (c) Special operations and the use of mobile cranes must comply with the approved hours of construction. Mobile cranes must not be delivered to the site prior to 7.30am without the prior approval of Council.

#### **(107) HAZARDOUS AND INDUSTRIAL WASTE**

Hazardous and/or industrial waste arising from the demolition/operational activities must be removed and/or transported in accordance with the requirements of the NSW Work Cover Authority pursuant to the provisions of the following:

- (a) *Protection of the Environment Operations Act 1997*
- (b) *Protection of the Environment Operations (Waste) Regulation 2005*
- (c) *Waste Avoidance and Resource Recovery Act 2001*
- (d) *Work Health and Safety Act 2011*
- (e) *Work Health and Safety Regulation 2011.*

#### **(108) COVERING OF LOADS**

All vehicles involved in the excavation and/or demolition process and departing the property with demolition materials, spoil or loose matter must have their loads fully covered before entering the public roadway.

**(109) RAINWATER HARVESTING & RAINWATER TANKS****(a) Use**

Rainwater is only to be collected from roof catchments and its use is restricted to toilet flushing, washing cars, garden use and for washing machines only.

**(b) Installation requirements**

- (i) All plumbing work is to be carried out by a licensed plumber and must be carried out in accordance with AS/NZS 3500:2003. A permit in accordance with the NSW Code of Practice - Plumbing and Drainage 2006 (as amended) is to be obtained from Sydney Water for the work to be carried out.
- (ii) Rainwater tanks shall be designed to include, but not be limited to the following:-
- (iii) Rainwater tanks shall be fixed to structurally adequate bases or walls in accordance with manufactures specifications or engineers details.
- (iv) Shall not be fixed to, or otherwise supported by a bounding common fence, wall or the like, without prior approval be adjacent land owners.
- (v) All roof gutter downpipes must be fitted with a first flush device in accordance with the manufacturer's recommendations.
- (vi) Openings being suitably sealed to prevent access by children and being fitted with a fine mesh screens in order to prevent penetration of contaminants and insects such as mosquitoes.
- (vii) All gutters, downpipes and associated supply pipe work must be free draining to prevent ponding of rainwater and made of suitable non corrodible materials.
- (viii) Shall have an overflow device being fitted to the rainwater tank which directs water into an existing stormwater drainage system, and shall have a suitable drainage plug/tap fitted and positioned in a manner that facilitates flushing and cleaning.
- (ix) The water supply system from a rainwater tank shall be clearly marked at intervals not exceeding 500 mm with the word 'RAINWATER' in contrasting colour, in accordance with AS 1345. Water outlets shall be identified as 'RAINWATER', or with a rainwater tap identified by a green coloured indicator with the letters 'RW'.
- (x) A suitable back up water supply using potable water must be provided to ensure that essential services such as toilet flushing are not contradicted where there is inadequate rainfall to meet demand or the rainwater harvesting system fails.

- (xi) Rainwater tanks that are not directly connected with the potable supply, the indirect connection shall be by means of a visible “air gap” external to the rainwater tank, in accordance with the provisions of the National Plumbing Code AS /NZS 3500 - Minimum air gap requirements.
- (xii) Where a rainwater tank is to be directly cross connected with the Sydney Water supply, an appropriate testable device shall be provided at the meter location on the potable water supply to prevent backflow of rainwater. This device must meet the requirements of Sydney Water.
- (xiii) Water pumps are to be located so as not causing an “offensive noise” as defined by the *Protection of the Environment Operations Act 1997* to any affected receiver.

(c) Proximity to other services

That all rainwater pipes must be separated from any parallel drinking water service. Above ground pipes must be 100mm away and below ground 300mm away from any drinking water pipe

(d) Marking and labelling

- (i) Above ground distribution pipes shall be continuously marked ‘RAINWATER’ in accordance with AS1345. Alternatively, adhesive pipe markers clearly labelled ‘RAINWATER’ made in accordance with AS 1345 can be used.
- (ii) Below ground distribution pipes shall be continuously marked ‘RAINWATER’ at intervals not exceeding 500mm in accordance with AS1345. Alternatively, identification tape/pipe sleeve continuously marked ‘RAINWATER’ made in accordance with AS 2648 can be used.
- (iii) All rainwater tank outlets, taps, valves and tank apertures shall be identified as ‘RAINWATER’ with a sign complying with AS1319 or a green coloured indicator with the letters ‘RW’. Alternatively a permanent sign at the front of the premises and visible to all visitors may be displayed advertising rainwater use.

(e) Maintenance

- (i) All rainwater tanks installed are to be maintained by the owner in accordance with these provisions, the NSW Health Department Circular no 2002/1 “Use of rainwater tanks where a reticulated potable supply is available” and any other local water utility requirements.
- (ii) The rainwater collection system shall be constantly maintained in accordance to the manufacturer’s instructions and in line with any approved maintenance plan so as to prevent risk of pathogenic microbial contamination including legionella and organisms.

**SCHEDULE 2**

The prescribed conditions in accordance with Division 8A of the *Environmental Planning and Assessment Regulation 2000* apply:

- Clause 98 Compliance with *Building Code of Australia* and insurance requirements under the *Home Building Act 1989*
- Clause 98A Erection of signs
- Clause 98B Notification of *Home Building Act 1989* requirements
- Clause 98C Conditions relating to entertainment venues
- Clause 98D Conditions relating to maximum capacity signage
- Clause 98E Conditions relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the *Environmental Planning and Assessment Regulation 2000*. This can be accessed at: <http://www.legislation.nsw.gov.au>

## BACKGROUND

### The Site and Surrounding Development

1. The site is irregular in shape and occupies an area of approximately 1,629m<sup>2</sup>. It is located at the prominent intersection of Darlinghurst Road, Victoria Street and Bayswater Road (refer to Figure 1).
2. The Eastern Suburbs railway line extends beneath the southern portion of the site.
3. There is a fall across the site from north to south of 0.8m along Darlinghurst Road and 2.5m along Victoria Street.
4. The site contains a mixed use development known as the Crest Hotel, comprising a 14 storey tower above a 2 to 3 storey podium with 3 basement levels. The acute corner facade presentation to the street is bland and uniform.



Figure 1: Site plan





**Figure 2:** Aerial photo of the subject site, highlighted

5. A 227 room hotel is contained within the tower, accessed from Victoria Street.
6. The podium contains a nightclub known as Goldfish, a sports bar and gaming lounge, TAB and bottle shop at the ground floor. These premises are all accessed from Darlinghurst Road. A secondary entrance to the gaming lounge and a fire exit are also provided from Victoria Street. It appears that these uses have recently ceased and the ground floor is vacant.
7. The first floor of the podium is currently vacant and the second floor contains the hotel reception area, function rooms and kitchen.
8. Vehicle access to the site is from Victoria Street. Parking is located on Basement levels 2 and 3, while a substation, loading bay, hotel laundry and back of house service areas are located on Basement level 1.
9. A lift overrun, plant room and various mechanical and communication services are located at roof level.
10. The existing development has a maximum height of 54m to the top of the lift overrun from Victoria Street, and approximately 50 to 52 metres to the roof of the building.
11. Views are available from most floors of the existing building of the CBD and Sydney Harbour to the north west, and of Rushcutters Bay and Bradleys Head to the north east.
12. The existing development has a gross floor area of 11,704m<sup>2</sup>, resulting in a floor space ratio of 7.1:1.

13. Located on the southern edge of the site, within Council land, is a landscaped garden bed set behind an iron fence and low masonry wall containing a memorial planting known as Jacaranda for Jasper (refer to Figure 9).
14. Surrounding land uses are characterised by mixed commercial and residential uses, including retail, licensed food and drink premises and tourist and visitor accommodation.
15. Surrounding development along Darlinghurst Road is predominantly between 3 and 5 storeys. On the western side of Victoria Street development in the immediate vicinity of the site ranges between 4 and 9 storeys, while on the eastern side of Victoria Street are a number of taller buildings up to 14 storeys.
16. Directly adjacent to the southern corner of the site is a 33 storey mixed use development, containing a 23 storey residential tower known as the Zenith building (82-94 Darlinghurst Road).
17. The site is located within the Potts Point/ Elizabeth Bay heritage conservation area (C51) and is identified as a detracting item. The nearest heritage items are located at 72-80 Darlinghurst Road (Minton House, refer to Figure 11) and 248 William Street (the Kings Cross Hotel, refer to Figure 10).
18. Photos of the site and surrounds are provided below:



**Figure 3:** View of the site looking north-east from Victoria Street



**Figure 4:** View of the site from adjacent residential tower located to the south, showing the plant room, and associated services located on the roof



**Figure 5:** View of the site, looking west from Bayswater Road



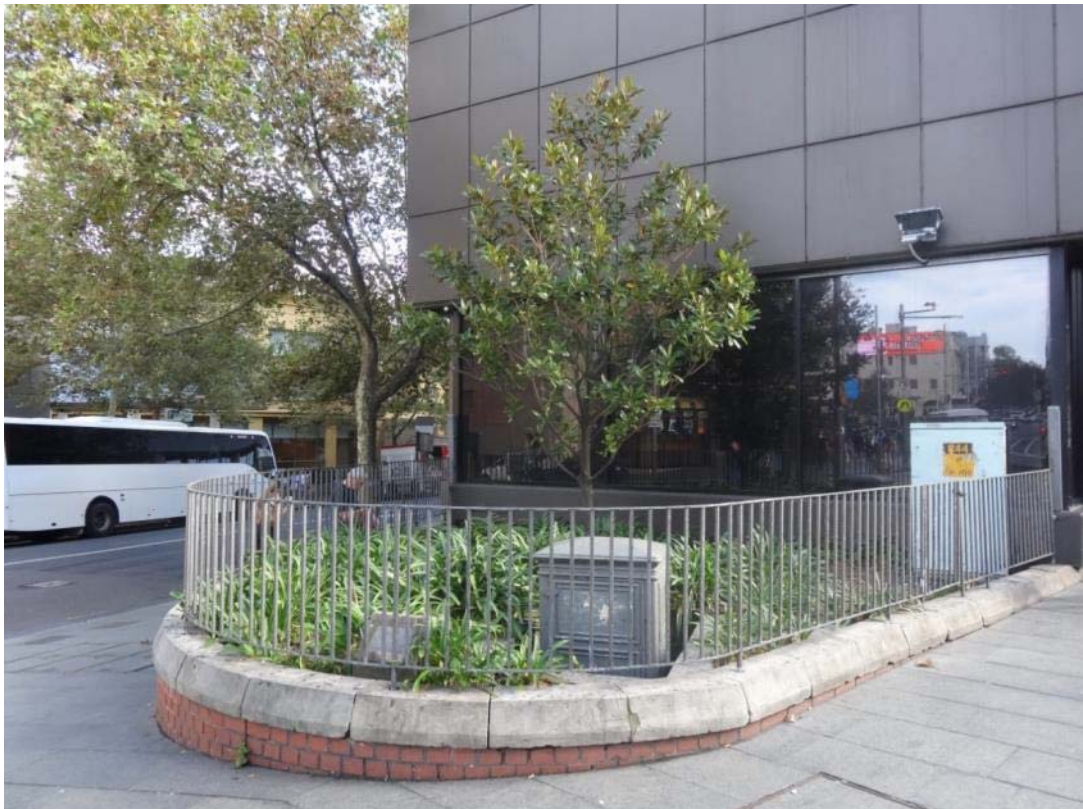
Figure 6: View of the site looking south west along Darlinghurst Road



Figure 7: View of the Victoria Street facade (west) with a 3 storey podium containing entries to the basement car park, loading dock, and hotel foyer



**Figure 8:** View of the southern corner of the site, from the intersection of Victoria Street and Darlinghurst Road



**Figure 9:** A garden bed containing a memorial planting known as 'Jacaranda for Jasper' is located adjacent to the southern corner of the site



**Figure 10:** View of the Kings Cross Hotel, a local heritage item located to the south west of the site



**Figure 11:** View towards the Zenith building at 82-94 Darlinghurst Road, located to the south east of the site, and a partial view of Minton House (left) directly opposite the subject site



**Figure 12:** View of the Elan building at 1 Kings Cross Road, located to the south east of the site



**Figure 13:** View of the Hampton building at 13-15 Bayswater Road, east of the site



Figure 14: View of the Darlinghurst Fire Station, south of the subject site

## PROPOSAL

19. The application seeks consent for a Stage 2 proposal for alterations and additions to the existing 17 storey building to accommodate a change of use from hotel accommodation to 139 residential apartments, above retail/ commercial uses, comprising:

(a) **Basement**

- (i) reconfiguration of the existing basement accessed from Victoria Street to accommodate parking for 56 cars and 134 bicycles, storage, waste and recycling rooms, mechanical plant and ancillary facilities;
- (ii) residential lobby accessed from Victoria Street; and
- (iii) retention of the existing substation.

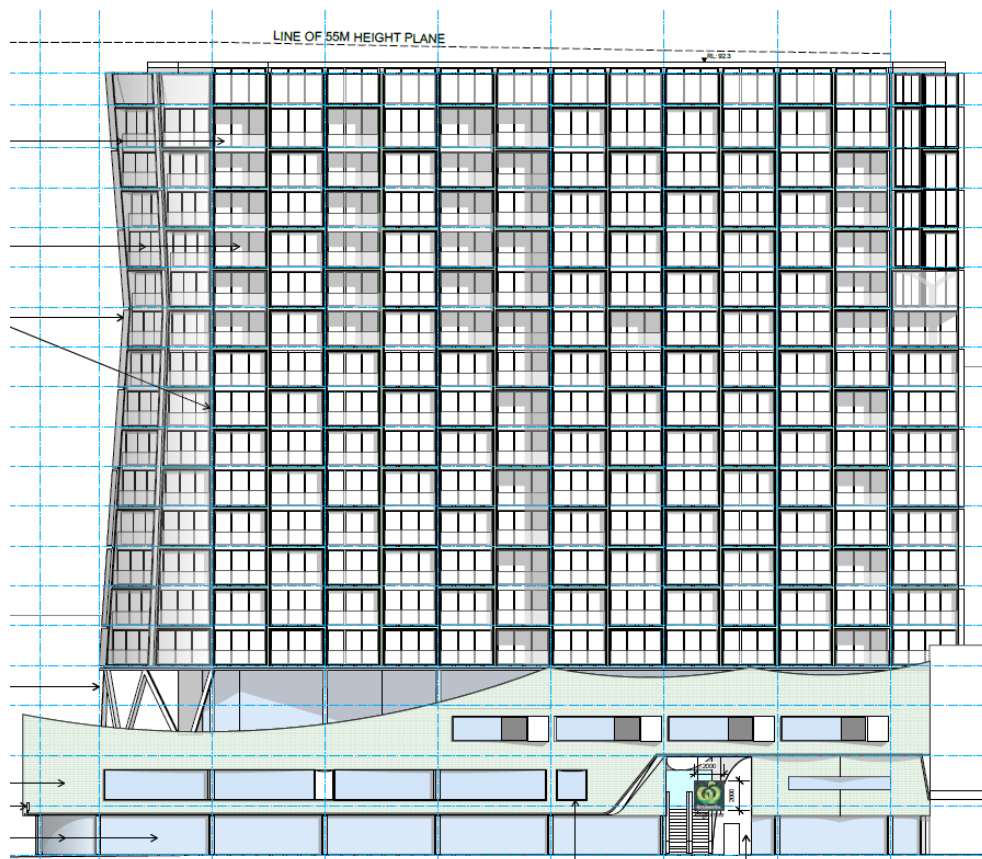
(b) **Podium**

- (i) removal of the existing licensed premises at ground level, accessed from Darlinghurst Road, including the Goldfish Bowl, Sports Bar, bottle shop and TAB, by the surrender of the various consents and replacement with a generic retail use;
- (ii) provision of a new 24 hour supermarket (885m<sup>2</sup>) and two speciality retail tenancies (201m<sup>2</sup> and 197m<sup>2</sup>) at Level 1 accessed from Darlinghurst Road via escalators and a lift;



- (iii) increase in podium height and floors and provision of 13 apartments, approximately 195m<sup>2</sup> of residential storage, 127m<sup>2</sup> of indoor recreation space and mechanical plant (Level 2);
    - (iv) provision of 343m<sup>2</sup> of common open space at the southern end of the podium (Level 2); and
    - (iv) new business identification signs.
  - (c) **Tower**
    - (i) demolition of existing roof-top plant and vertical services and creation of an additional storey up to 55m in height;
    - (ii) refurbishment and structural re-enforcement to accommodate 126 apartments including the addition of balconies; and
    - (iii) 7 private roof top terraces.
20. The proposal contains a total of 139 apartments, comprising the following mix:
- (a) 4 x studios (3%)
  - (b) 60 x 1 bedroom apartments (43%)
  - (c) 65 x 2 bedroom apartments (46%)
  - (d) 10 x 3 bedroom apartments (7%)
21. The proposal comprises a combination of 'cross over' apartments with access to two facades on opposite sides of the building, and single storey apartments with relatively shallow floor plates and wide frontages which facilitate good natural ventilation and solar access (refer to Figures 15 to 25). 4 apartments are provided with double height spaces.
22. The podium is proposed to be clad in glazed green tiles laid in a brick pattern and features a scalloped parapet line and moulded window reveals (refer to Figure 26).
23. The residential tower component of the proposal is articulated through a vertical stretcher patterned facade which tapers in the middle, presenting an hourglass silhouette when viewed from the south (refer to Figures 17 and 29).
24. In order to achieve the geometry of the hourglass form, small sections of the tower project beyond the boundaries of the site up to a maximum of 605mm.
25. The existing access to the basement parking levels from Victoria Street is to be retained.
26. It is proposed to utilise an existing 11.5 metre long on-street loading zone on Victoria Street for all site servicing, including the proposed supermarket, as the floor to ceiling height within the existing basement cannot accommodate large vehicles.
27. The Council owned parcel of land containing the memorial planting known as the Jacaranda for Jasper immediately adjoining the site's southern boundary does not form part of this application.

28. No excavation or ground penetrating works are proposed.
29. The application was amended on 30 June 2015 as follows:
  - (a) commercial signage deleted (to be the subject of a future application);
  - (b) Darlinghurst Road awning amended to raise the minimum height to 3.2m above footpath level;
  - (c) provision of an additional window to the southern elevation of the podium; and
  - (d) provision of additional information regarding loading and deliveries associated with the proposed supermarket.
30. An amended Noise Impact Assessment was provided on 5 August 2015 in response to feedback from Council officers.
31. A Section 96 modification application to the Stage 1 building envelope approved under D/2013/1747 was lodged on 13 March 2015 and is being assessed concurrently. The modification application seeks amendments to the approved Stage 1 building envelope so as to accord with the current Stage 2 application, and to seek the deletion of a condition of consent relating to site contamination.
32. Procedurally, the Section 96(2) application to modify the Stage 1 consent should be considered and determined prior to the Stage 2 Development Application.
33. The proposed plans are contained in Attachment A, with some extracts below.



**Figure 15:** East elevation (to Darlinghurst Road)

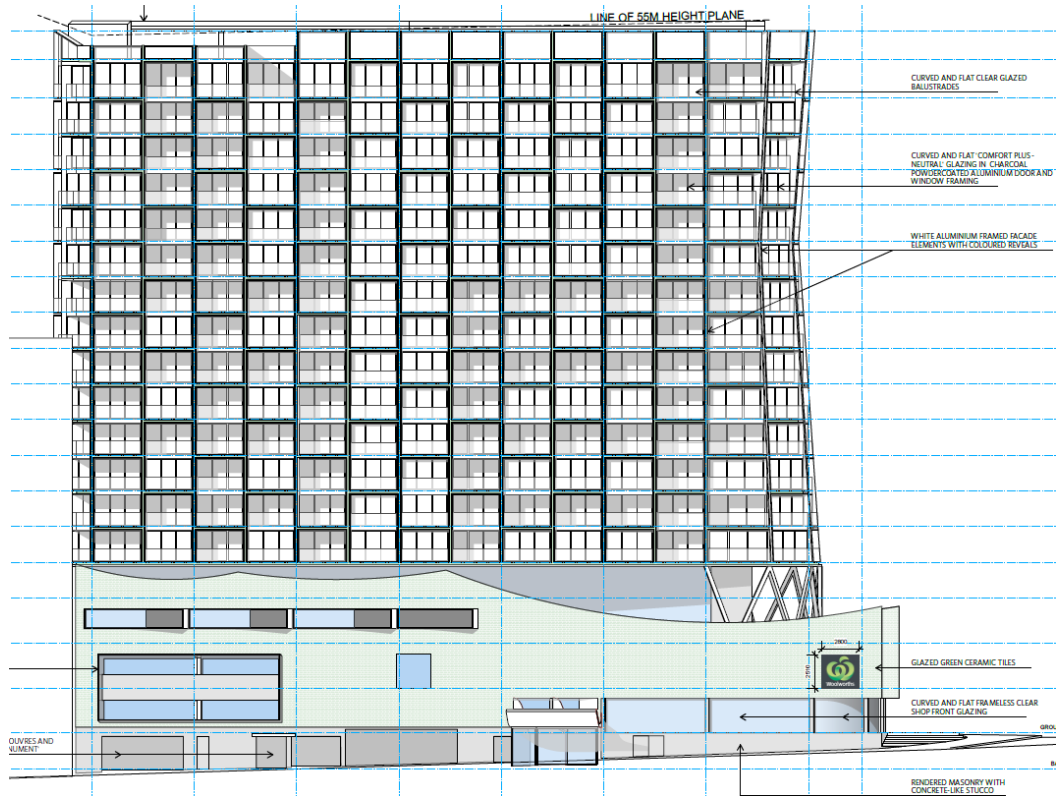


Figure 16: West elevation (to Victoria Street)

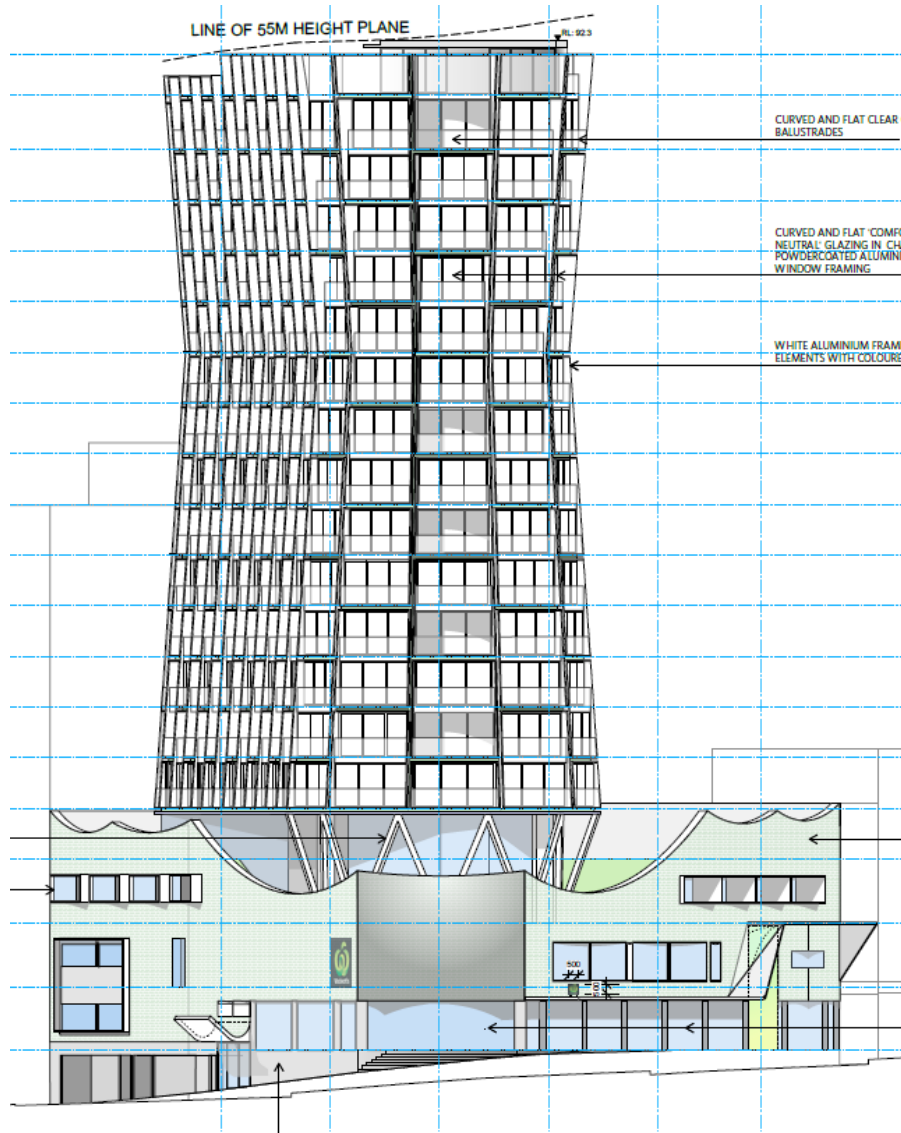


Figure 17: South elevation (on acute corner)

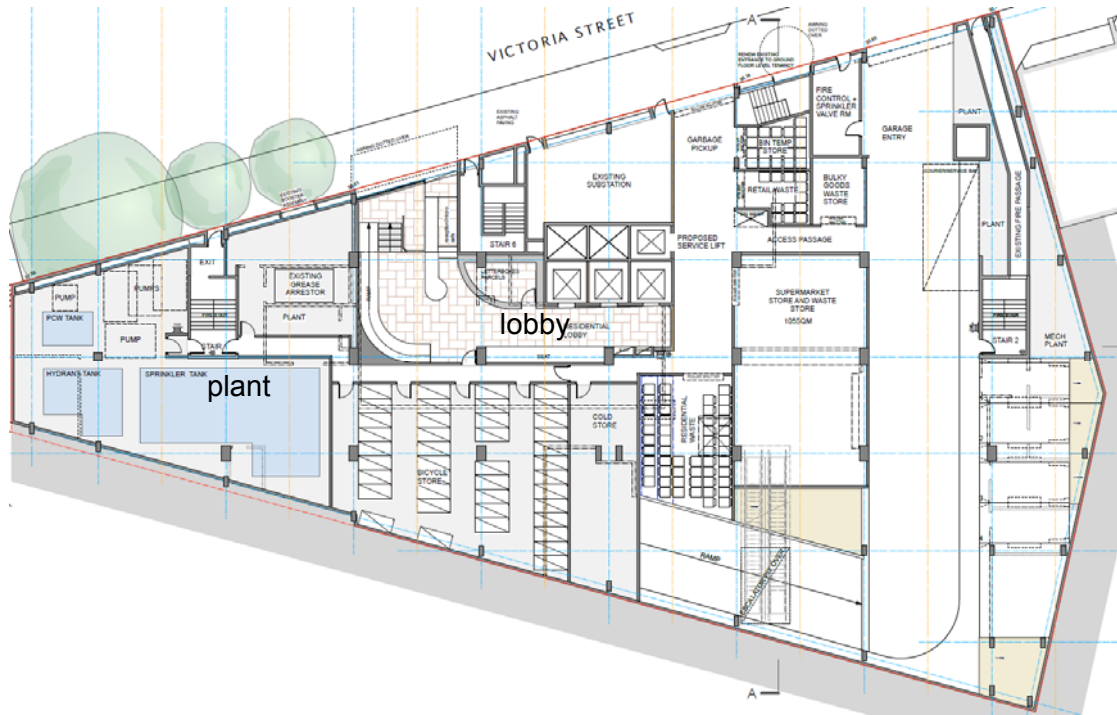


Figure 18: Podium basement Level 1, including the residential lobby accessed from Victoria Street

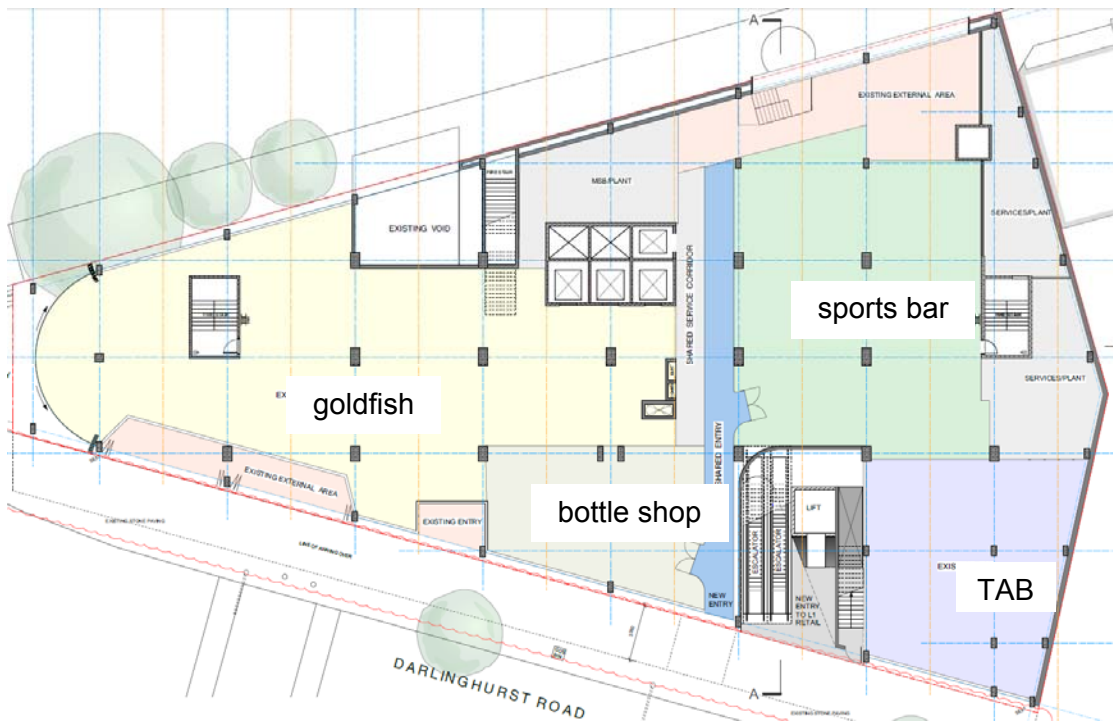
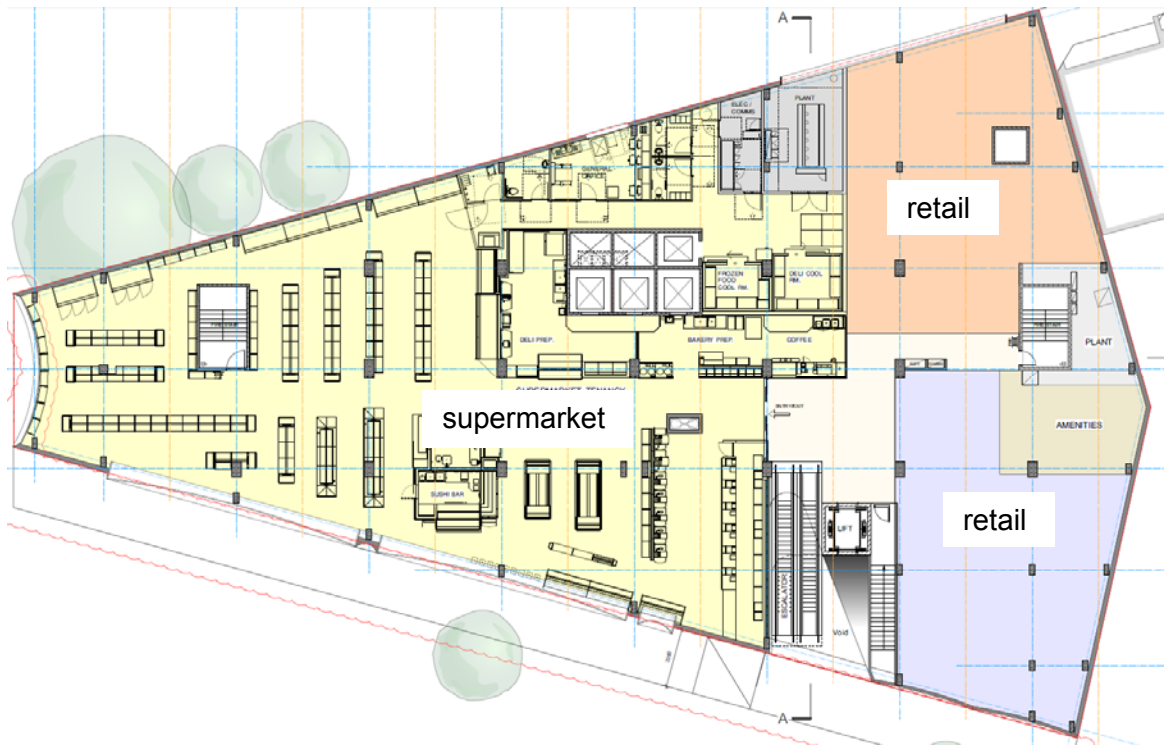
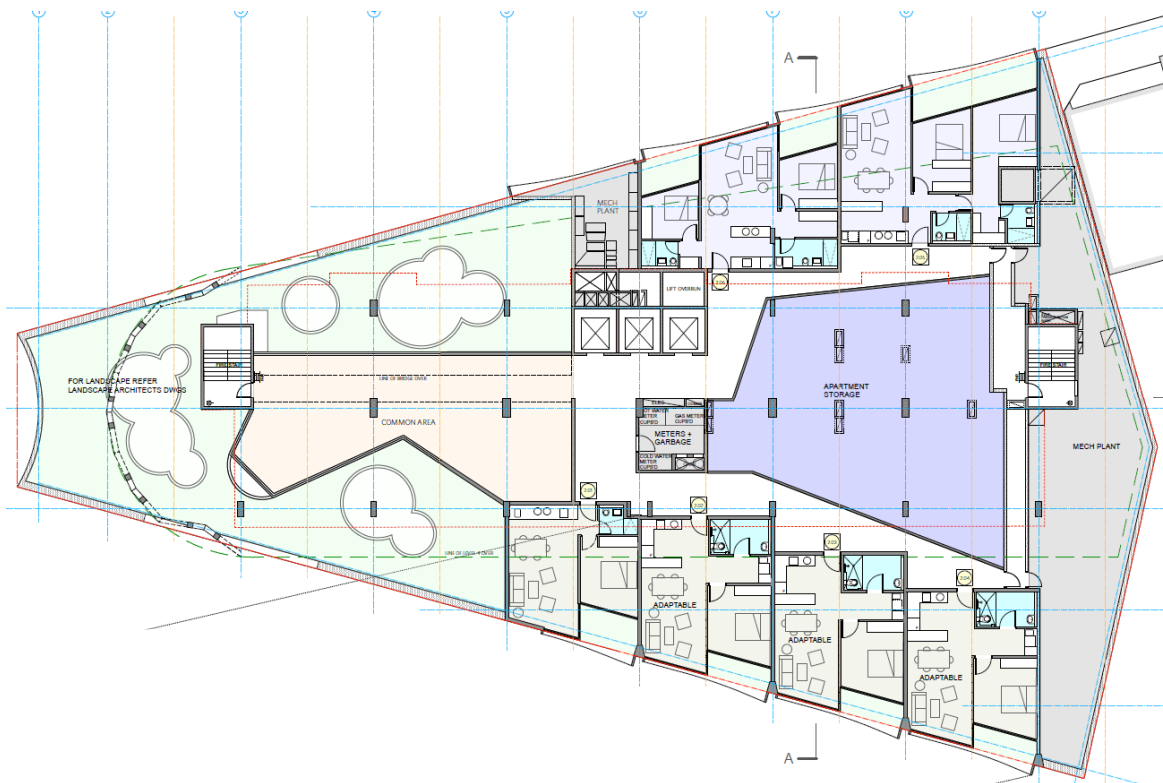


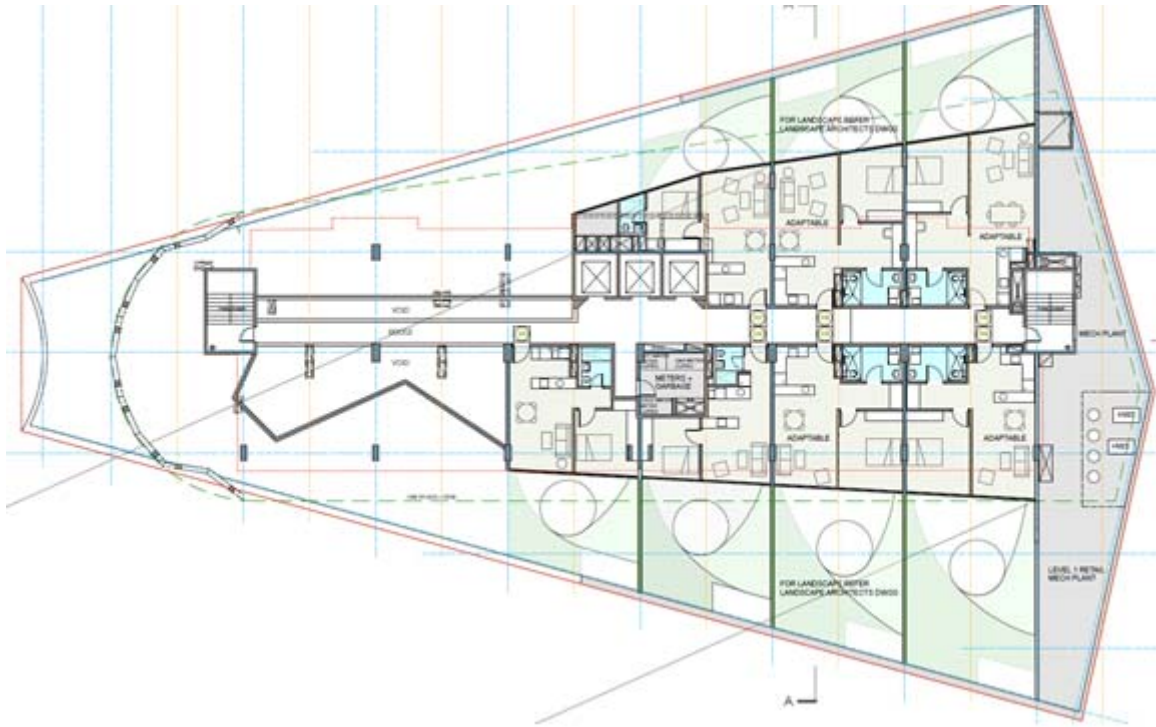
Figure 19: Podium ground floor plan of existing commercial/retail uses to be retained



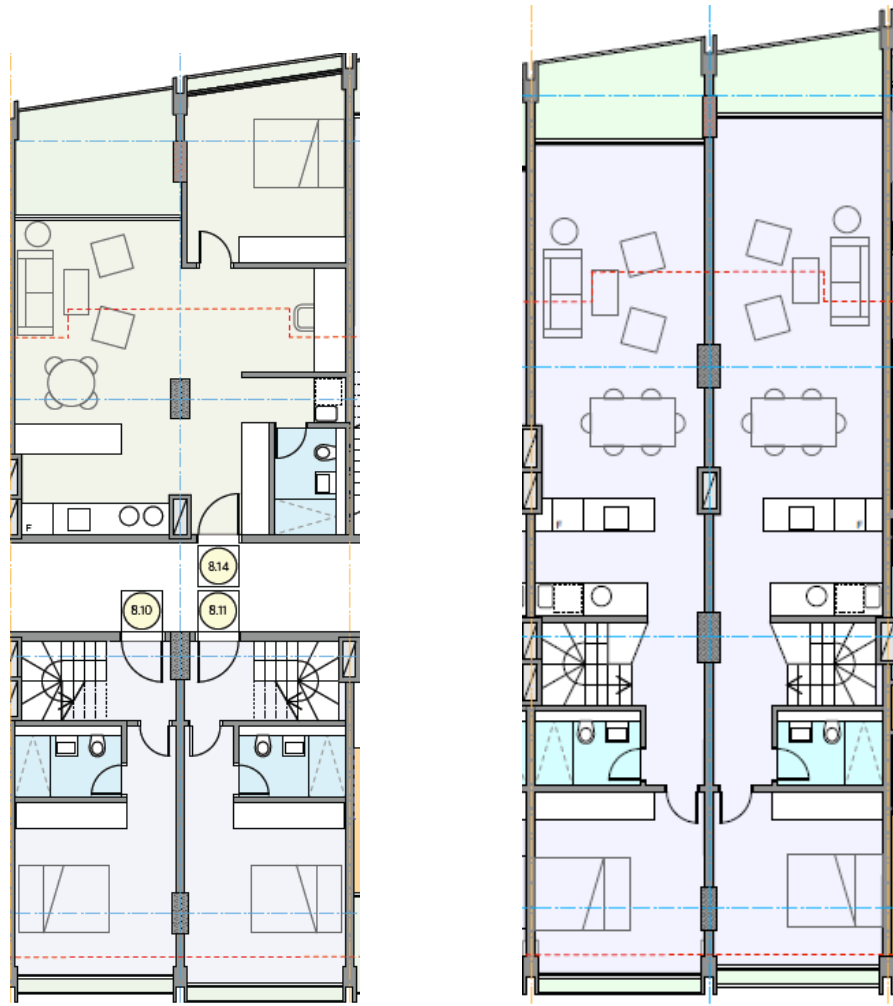
**Figure 20:** Podium Level 1 floor plan containing the proposed supermarket and 2 separate retail tenancies



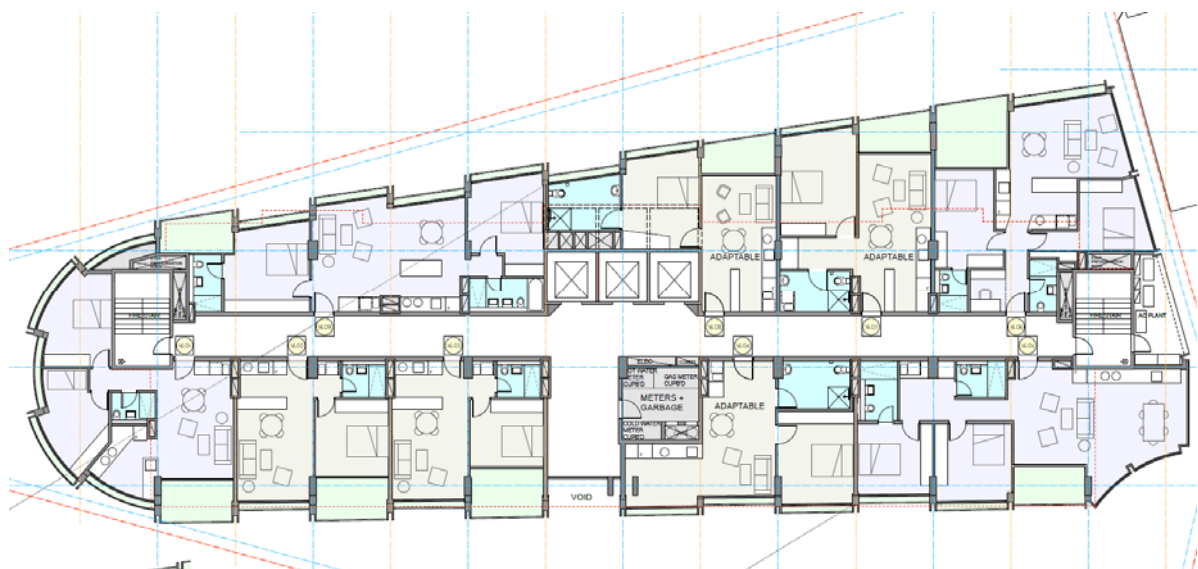
**Figure 21:** Podium Level 2 floor plan containing additional apartment storage areas and communal open space and a common room



**Figure 22:** Podium Level 3 floor plan containing one bedroom apartments with large garden terraces



**Figure 23:** Typical mid-level apartment layout showing cross over and single aspect apartments. These type of apartments occur at levels 4-5, 6-7, 8-9 and 10-11. Generally, the apartments facing east on a lower level are provided with the cross over layout on the upper level, while the single aspect apartments face west



**Figure 24:** Typical upper level floor plan showing single aspect apartments



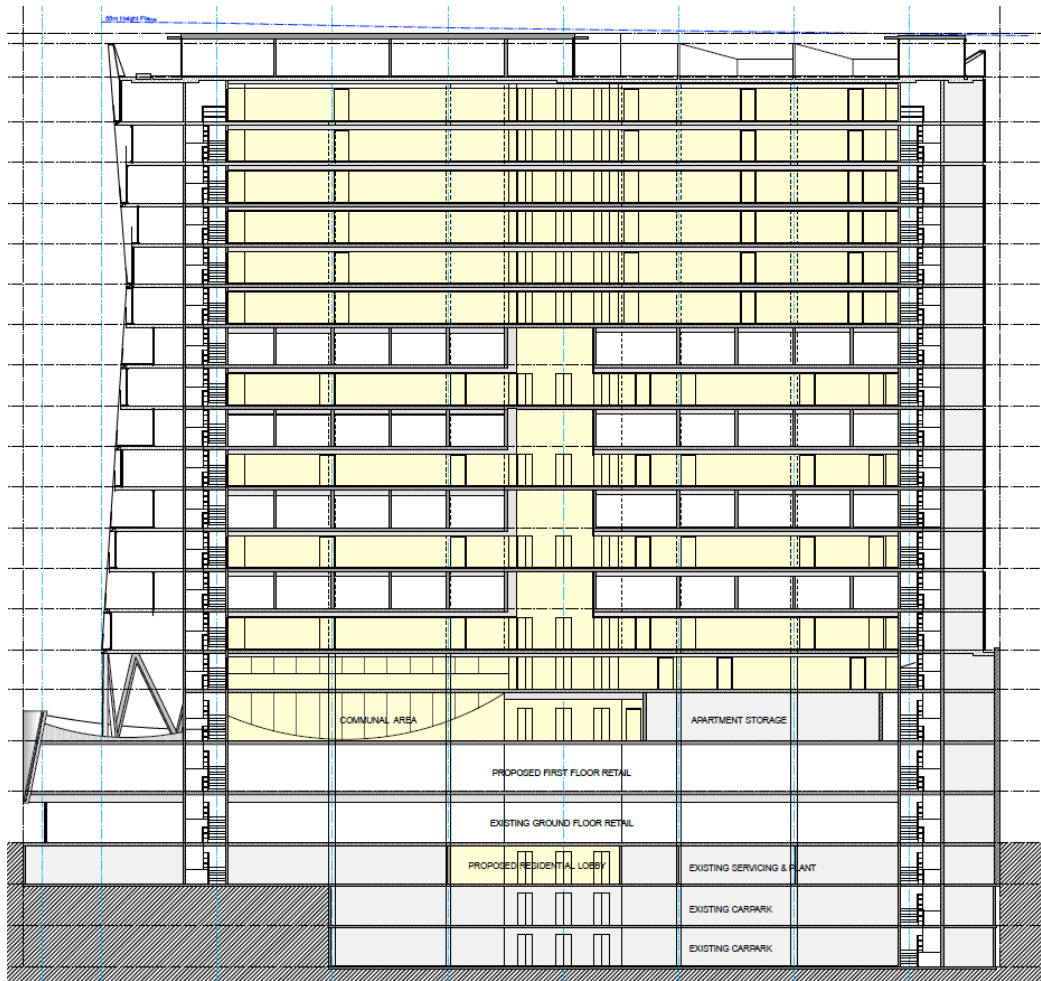


Figure 25: Section

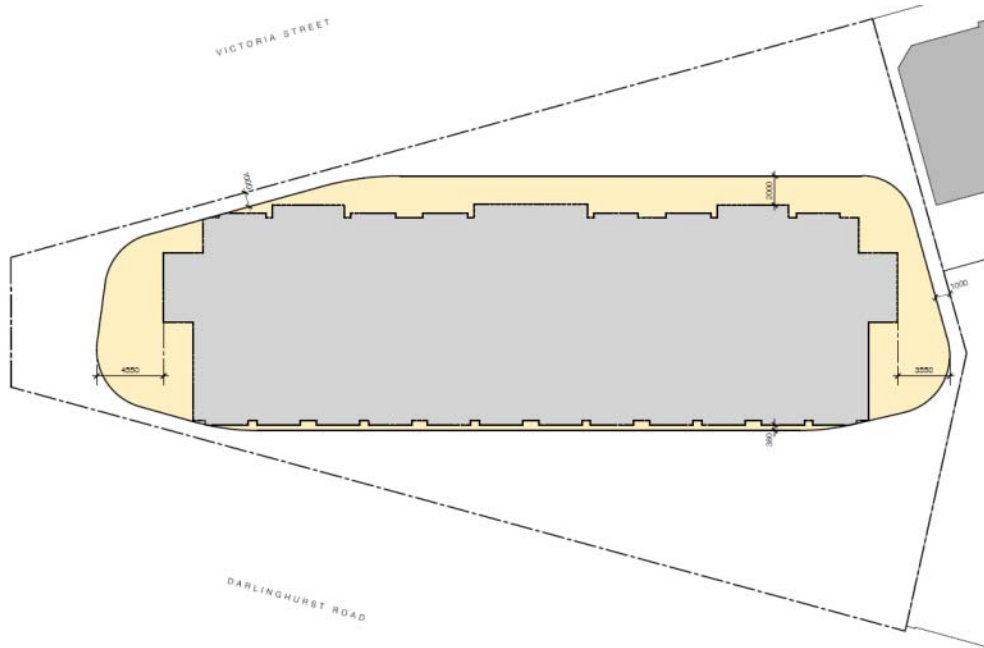


**Figure 26:** Photomontage of the proposed development viewed from Darlinghurst Road, looking west

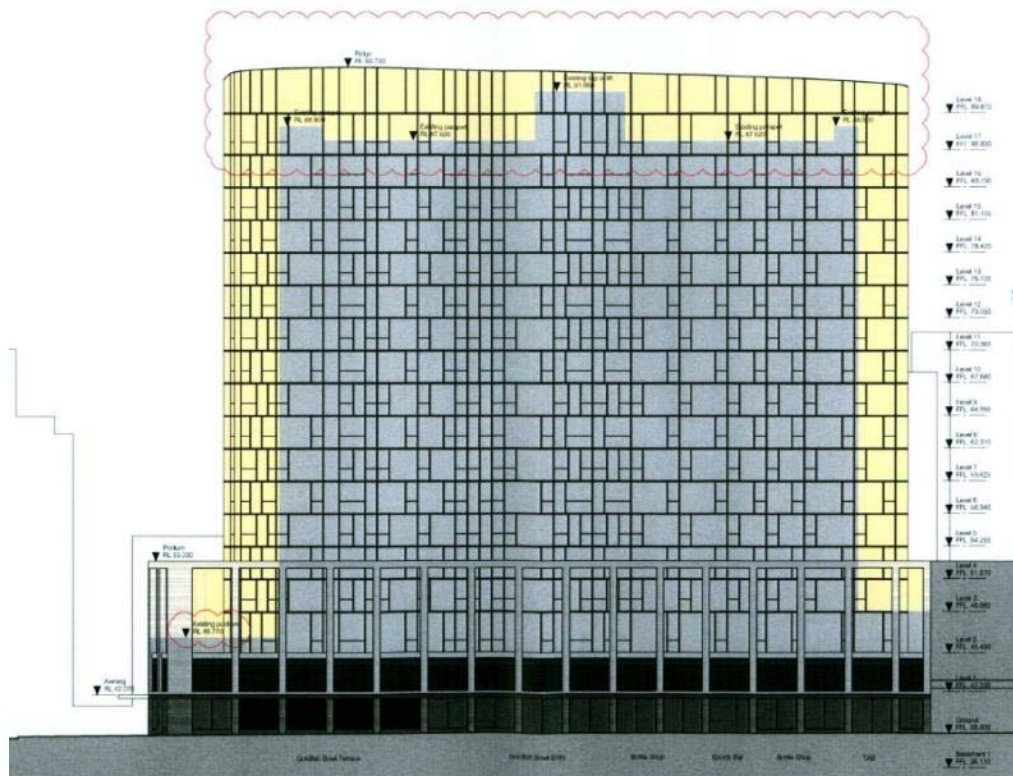
## HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION

### D/2013/1747

34. A Stage 1 Development Application (D/2013/1747) was approved by the Central Sydney Planning Committee on 21 August 2014 which established an indicative building envelope for the future redevelopment of the site (the Stage 1 consent and drawings are at Attachment B).
35. The Stage 1 application anticipated the retention of the floor slabs and columns of the existing building with extensive alterations and additions to enable conversion from hotel accommodation to residential apartments.
36. The approved Stage 1 building envelope provides for an enlarged building footprint, including an additional two (2) to three (3) storeys to create a four (4) to five (5) storey podium and additions to the tower up to a maximum height of 55 metres (refer to Figures 27 and 28).
37. The Stage 1 Development Application did not indicate any specific land uses or the quantum of gross floor area.



**Figure 27:** Diagram showing the increased tower footprint approved under the Stage 1 development consent (D/2013/1747)



**Figure 28:** Approved Stage 1 building envelope, east elevation (Darlinghurst Road)

38. In accordance with the requirements of Clause 6.21(5) of Sydney LEP 2012 which requires a competitive design process for buildings exceeding 25m located outside Central Sydney, the Stage 1 approval required a competitive design process be undertaken prior to the lodgement of a Stage 2 Development Application.

39. The competitive design process was undertaken in accordance with the City of Sydney Competitive Design Policy 2012. The winning scheme by Durbach Block Jagers forms the basis of the current Stage 2 Development Application (refer to Figures 29 and 30). A Competitive Design Alternatives Process Report is contained in Attachment C.
40. In terms of land use the Competition Brief required non-residential land uses on level 1 of the podium and 1,300 square metres of retail land use. Prior to the competition, it was also requested that the retail land uses include a supermarket.



**Figure 29:** Photomontage of the winning scheme by Durbach Block Jagers viewed from the south



**Figure 30:** Photomontage of the winning scheme by Durbach Block Jagers

41. The Competition Report identified that the winning scheme addresses the context of the area at the southern point of the acute corner, by providing an 'hourglass' shape, atop a green tiled and landscaped scalloped base. In addition, the selection committee preferred the design's contribution to street activation by the location of communal spaces on the southern end of the podium roof, as well as retail spaces in the podium levels.
42. The selection committee then identified 13 points in which the design required further refinement and resolution. These generally related to: street activation; residential amenity; and the glass detail of the southern elevation.
43. Most of these refinements have successfully been addressed in the current Stage 2 proposal. Some minor non-compliances in relation to apartment layouts and amenity still exist (and these are addressed in this report), but on balance, these non-compliances are acceptable.

#### **ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS**

44. The application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
  - (a) Environmental Planning Instruments and DCPs.

#### **State Environmental Planning Policy No 55—Remediation of Land**

45. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.

46. It is noted that the Stage 1 approval granted under D/2013/1747 requires a detailed site contamination investigation to be submitted as part of any future Stage 2 application.
47. Given that the site is capped and no excavation is proposed, a detailed site contamination investigation is not considered necessary. An application seeking modifications to the Stage 1 consent, including the deletion of the condition requiring a detailed site contamination investigation, is currently under assessment.
48. Council's Environmental Health Unit have advised that given the historic land uses of the site and the scope of works proposed, a detailed contamination investigation is not required and as such Council can be satisfied that the site is suitable for the proposed use.

#### **State Environmental Planning Policy No 64—Advertising and Signage**

49. In response to feedback from Council staff concerning the lack of detail regarding the proposed commercial signage, the application was amended on 30 June 2015 to remove all signage. As such, an assessment under SEPP 64 is not required.
50. A condition of consent has been recommended to ensure that any new commercial signage is to be subject to a separate development application and must include a comprehensive signage strategy for the whole building.
51. It is noted that the amended plans still contain commercial signage for the proposed supermarket, however these are explicitly excluded from the recommended approval, and a condition of consent has been recommended to require the submission of a signage strategy for any future commercial signage. Any future development application for signage would be required to comply with SEPP 64.
52. In addition, it appears that there is a development consent from 1993 (U93/00716) which relates to a roof level sign and a facade sign. It is possible that the existing backing structure for the roof sign still exists at the top of the building. Both of these signs, if they were to be reused, would detract from the design excellence of the building. Therefore, given that this application is for a major redevelopment of the site, and has resulted from a design competition, the recommendation includes a condition to require the surrender of that consent.

#### **State Environmental Planning Policy No 65—Design Quality of Residential Flat Development and Draft SEPP**

53. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 10 design quality principles, being:
  - (a) **Principle 1:** Context
  - (b) **Principle 2:** Scale
  - (c) **Principle 3:** Built Form
  - (d) **Principle 4:** Density
  - (e) **Principle 5:** Resource, energy and water efficiency

- (f) **Principle 6:** Landscape
  - (g) **Principle 7:** Amenity
  - (h) **Principle 8:** Safety and Security
  - (i) **Principle 9:** Social Dimensions
  - (j) **Principle 10:** Aesthetics
54. The development is considered generally acceptable when assessed against the above stated principles and the SEPP and Draft SEPP generally, which are replicated in large part within Council's planning controls.

### Residential Flat Design Code

55. As the application was lodged prior to 19 June 2015, the Residential Flat Design Code (RFDC) still applies.
56. Clause 30 of SEPP 65 requires consideration of the Residential Flat Design Code (RFDC), which provides additional detail and guidance for applying the design quality principles outlined in SEPP 65 to a specific locality. Compliance with the guidelines within the RFDC are addressed in the table below.

Residential Flat Design Code		
Rule of Thumb	Compliance	Comment
<b>Building Depth</b> 10-18m (glass to glass)	No but acceptable	<p>The residential component of the podium (Level 2) has a maximum building depth of 7m at the southern end of the site and 37.5m at the northern end of the site. The northern end of podium exceeds the maximum building depth by 19.5m. This is acceptable as the majority of the floor plate on Level 2 comprises corridors and a central storage area, and apartments comply with the maximum depth of 8m.</p> <p>Due to the geometry of the tower, the building depth varies as follows:</p> <ul style="list-style-type: none"> <li>• Level 5 : 12m -20m (max 2m over)</li> <li>• Level 8: 11m-19m (max 1m over)</li> <li>• Level 13: 10m –18m (complies)</li> <li>• Level 17: 11m –19.7m (max 1.7m over)</li> </ul>

Residential Flat Design Code		
Rule of Thumb	Compliance	Comment
		The proposal is acceptable as the extent of non-compliance is relatively minor, being between 1m and 2.5m over the maximum building depth. In addition the proposal does not result in any significant overshadowing and relates to the adaptive re-use of an existing building
<p><b>Building Separation</b></p> <p>Up to four storeys/up to 12 metres:</p> <ul style="list-style-type: none"> <li>• 12m between habitable rooms/ balconies</li> <li>• 9m between habitable/ balconies and non-habitable rooms</li> <li>• 6m between non-habitable rooms</li> </ul> <p>Nine storeys and above/over 25 metres:</p> <ul style="list-style-type: none"> <li>• 24m between habitable rooms/ balconies</li> <li>• 18m between habitable/ balconies and non-habitable rooms</li> <li>• 12m between non-habitable Rooms</li> </ul>	Yes except for the northern side	<p>The proposal meets the required minimum building separation distances from surrounding development to the east and west. However, a separation of 1m is achieved between the site and the neighbouring 12 storey apartment building at 214-220 Victoria Street, at the northern end of the site.</p> <p>The neighbouring building at 214-220 Victoria Street does not contain any windows or balconies on its corresponding southern elevation.</p> <p>Levels 12 to 17 of the proposal provides apartments with primary bedroom and secondary living room windows near the northern site boundary. However, this is acceptable in this instance as the built form of the proposal on the northern side (in the location of the primary bedroom window) was part of the design competition winning scheme, and the building facades require articulation as they are predominantly seen in the round. In addition, the offending windows occur on levels 12 to 17, which sit above the 40m height limit of the adjoining building.</p>
<p><b>Deep Soil Zone</b></p> <p>A minimum of 25% of the open space area of the site should be a deep soil zone.</p>	No but acceptable	An area of approximately 407m <sup>2</sup> of deep soil would be required. The application does not provide any deep soil as the existing building which occupies 100% of the site area is to be retained. The variation is supported as there is a communal landscaped area on the roof of the podium which adjoins a common room.



<b>Residential Flat Design Code</b>		
<b>Rule of Thumb</b>	<b>Compliance</b>	<b>Comment</b>
<p><b>Communal Open Space</b> Communal open space to be 25- 30% of site area.</p>	No but acceptable	<p>An area of between 407m<sup>2</sup> and 489m<sup>2</sup> is required for communal open space. The proposal provides 343m<sup>2</sup> of communal open space on Level 2, which equates to 21% of the site area. This 4% or 64m<sup>2</sup> non-compliance is acceptable in this instance because a common room of 127m<sup>2</sup> is also provided and designed to be a central feature of the surrounding communal open space. Although the communal open space will not achieve very good access to sunlight, it is located in an appropriate area given the constraints of the existing building. The landscaped terrace areas on the roof of the building are private terraces linked to individual apartments.</p>
<p><b>Private Open Space</b> Provide all apartments with private open space with a minimum dimension of 2m</p>	Partial	<p>128 apartments or 92% are provided with private open space in the form of balconies and terraces, accessible from the living area. The remaining 11 apartments or 8% are provided with Juliet balconies. This is acceptable given that the proposal is an adaptive reuse of an existing building, and the City's DCP allows a proportion of apartments to have no balconies.</p> <p>Some apartments have balconies with minimum dimensions of less than 2 metres. However, some apartments have a combination of Juliet balconies and typical deeper balconies and some of the smaller balconies are attached to apartments which exceed unit size requirements. The non-compliances are generally as a result of the geometry of the building and the additional strengthening required to add balconies to the building.</p> <p>The private open space provided is considered to be functional and to provide suitable amenity.</p>
<b>Safety</b>	Yes	A Crime Risk Report has been prepared which is acceptable.

<b>Residential Flat Design Code</b>		
<b>Rule of Thumb</b>	<b>Compliance</b>	<b>Comment</b>
<b>Visual Privacy</b>	Yes	The proposal generally complies with building separation requirements with the exception of the separation from the adjoining building to the north at 214-220 Victoria Street, which has been discussed above.
<b>Single Aspect Apartments</b> Limit single aspect apartments with a southerly aspect to max.10% of total units.  Single aspect apartments should be limited in depth to 8m from a window.	Yes	The proposal includes 8 single aspect apartments or 6% that are orientated in a southerly direction. These all comply with the maximum apartment depth of 8m and therefore comply with the control.  However, some other single aspect apartments are between 5.5m and 10m deep. This 2m non-compliance is acceptable as it is generally a small number of units and the overall amenity of the apartments is good.
<b>Apartment Layout (Kitchen)</b> The back of a kitchen should be no more than 8m from a window.	No but acceptable	Approximately 11% or 15 apartments have kitchens that exceed 8m in depth from a window. However, these apartments are cross-over apartments with a dual aspect and therefore achieve good amenity.
<b>Apartment Layout (Cross-Over)</b> The width of cross-over or cross-through apartments over 15 m deep should be 4m or greater to avoid deep narrow apartment layouts.	No but acceptable	Cross-over apartments greater than 15m in depth have a minimum width of 3.6m. This is a variation of 400mm from the minimum requirement.  The variation is considered to be relatively minor and is mainly the result of the existing structure and constraints of the building. The indicative furniture layout of the apartments demonstrates that the apartments can still function with this width.

Residential Flat Design Code		
Rule of Thumb	Compliance	Comment
<p><b>Apartment Layout (Unit Sizes)</b></p> <p>Minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• Studio: 38.5m<sup>2</sup></li> <li>• 1 bed: 50m<sup>2</sup></li> <li>• 2 bed: 70m<sup>2</sup></li> <li>• 3 bed: 95m<sup>2</sup></li> </ul> <p>(Note: The new Apartment Design Guide (ADG) allows studios to be 35m<sup>2</sup> in area.</p>	<p>No but acceptable subject to conditions requiring changes</p>	<p>A range of apartment sizes are provided as follows:</p> <ul style="list-style-type: none"> <li>• Studios: 31m<sup>2</sup> – 35m<sup>2</sup></li> <li>• 1 bed: 40m<sup>2</sup> – 86m<sup>2</sup></li> <li>• 2 bed: 55m<sup>2</sup> – 102m<sup>2</sup></li> <li>• 3 bed: 113m<sup>2</sup> – 146m<sup>2</sup></li> </ul> <p>The majority of apartments are actually oversized because of the position of the existing structure. However, 36 apartments or 26% are undersized. The extent of non-compliance with the minimum size requirements varies, however 24 apartments are considered to be significantly undersized. This can be addressed through the reconfiguration of apartments without resulting in a non-compliant unit-mix. An appropriate condition of consent has been recommended. Refer to discussion under the heading Issues.</p>
<p><b>Balconies</b></p> <p>2m min balcony width</p>	<p>No but acceptable</p>	<p>Some primary balconies and terraces to apartments within the tower have a minimum depth of less than 2m, as discussed above. This is acceptable as the irregular geometry of balconies and terraces provides spaces that are still functional and provide adequate amenity.</p>

<b>Residential Flat Design Code</b>		
<b>Rule of Thumb</b>	<b>Compliance</b>	<b>Comment</b>
<p><b>Ceiling Heights</b></p> <p>2.7m min ceiling height in habitable areas.</p> <p>2.25-2.4m ceiling height in non-habitable areas.</p>	No but acceptable	<p>The existing floor to ceiling heights are approximately 2.4m. In order to provide spatial relief the proposal provides 95 or 68% of apartments that are over the minimum size requirements, as well as 42 or 30% of apartments that have cross-over layouts or contain double height voids. In addition, the proposal achieves a good level of amenity in terms of solar access, cross-ventilation and outlook. As the proposal retains an existing building and is capable of complying with the BCA, this is considered to be acceptable. However, as this issue was raised in the competition report, a condition of consent is recommended to require specific construction details of floor slabs prior to the issue of the Construction Certificate.</p>
<p><b>Internal Circulation</b></p> <p>The number of units accessible from a single core/corridor should be limited to eight.</p>	No but acceptable	<p>The existing building has one lift core, which is centrally located within the tower floor plate. The maximum number of apartments accessed from the lift core/ corridor is 18, which does not comply with the control. This is also because the layout provides cross over apartments. However, this is acceptable because the central position of the lift means that 8 apartments are accessed from one side, while 10 apartments are accessed from the other side. This means that the objective of the control to avoid long access corridors, is avoided.</p>
<p><b>Storage</b></p> <p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> <li>• 1 bed: 6m<sup>3</sup></li> <li>• 2 bed: 8m<sup>3</sup></li> <li>• 3 bed: 10m<sup>3</sup></li> </ul> <p>(With minimum 50% storage area located within unit)</p>	Yes	<p>Adequate storage is provided within apartments, and within basement levels and at Level 2.</p>

Residential Flat Design Code		
Rule of Thumb	Compliance	Comment
<p><b>Solar Access</b></p> <p>70% of units to receive 2 hours of direct sunlight in midwinter to living rooms and private open spaces.</p>	No but acceptable	<p>With a total yield of 139 apartments, 97 are required to receive a minimum of 2 hours direct solar access to living room windows and private open spaces.</p> <p>The proposal provides 90 or 65% of apartments with a minimum of 2 hours of direct solar access to living rooms in midwinter, and 92 or 66% of apartments receive a minimum of 2 hours of direct solar access to private open spaces in midwinter (not including Juliet balconies).</p> <p>This issue was anticipated in the competition report which sought design refinements so that 70% of living rooms faced Victoria Street to achieve the solar access requirements.</p> <p>The non-compliance for living rooms is at 5% which equates to 6-7 apartments. Given that this is a relatively minor quantum compared to the total number of 139 apartments, this level of non-compliance is acceptable, and would not be enough to conclude that cumulatively the proposal was not acceptable.</p>
<p><b>Natural Ventilation</b></p> <p>60% of units to be cross ventilated.</p> <p>25% of kitchens within a development should have access to natural ventilation.</p>	Yes	<p>93 or 67% of apartments are naturally cross ventilated. This was also an issue anticipated in the competition report. This has been adequately addressed in the proposal.</p>

### State Environmental Planning Policy (Infrastructure) 2007

57. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.
58. The application is not integrated development.

**Clause 87**

59. The application is subject to Clause 87 (Subdivision 2 Development in Rail Corridors) of the SEPP as the development involves a residential use on land adjacent to a rail corridor, which has the potential to be adversely affected by rail noise or vibration.
60. In accordance with this clause, consent must not be granted for residential use unless the consent authority is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:
  - (a) in any bedroom in the building—35 dB(A) at any time between 10.00 pm and 7.00 am; and
  - (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.
61. A Noise Impact Assessment prepared by Acoustic Logic was submitted with the application. This assessment was amended on 5 August 2015 to address noise and vibration impacts on the proposed development from the Eastern suburbs railway line, and noise from the existing commercial uses located on the ground floor.
62. The amended assessment concludes that the proposal is capable of complying with the above criteria subject to recommended attenuation measures relating to apartments in the lower levels of the building. These include the use of furring channels and/or isolated ceilings. Suitable conditions are recommended to address these requirements and ensure that floor to ceiling heights are maintained.
63. The application was referred to RailCorp (now Sydney Trains) on 26 March 2015. No objection was raised, subject to the satisfaction of technical requirements regarding the protection of railway infrastructure. As the proposal does not involve excavation it is capable of meeting these requirements. Sydney Trains requirements have been included in the recommended conditions of consent.

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)**

64. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
65. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
  - (a) protect and improve hydrological, ecological and geomorphologic processes;
  - (b) consider cumulative impacts of development within the catchment;
  - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
  - (d) protect and rehabilitate riparian corridors and remnant vegetation.
66. The site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

67. A BASIX Certificate has been submitted with the development application.
68. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. A condition is recommended ensuring the measures detailed in the BASIX certificate are implemented.

**State Environmental Planning Policy No 32—Urban Consolidation (Redevelopment of Urban Land**

69. SEPP 32 provides for the increased availability of housing within the inner city and to assist in meeting the demand for housing close to employment, leisure and retail opportunities.
70. The proposed development of the site is consistent with the aims and objectives of the SEPP.

**Sydney LEP 2012**

71. The site is located within B2 Local Centre zone. The proposal relates to commercial and residential uses and is permissible.
72. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

<b>Compliance Table</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.3 Height of Buildings	Yes	A maximum height of 55m is permitted. A height of 55m is proposed.
4.4 Floor Space Ratio	Yes	A maximum FSR of 8:1 is permitted.  The proposed FSR of 8.78:1 complies with the FSR permitted in accordance with Clause 6.21(7)(b)(i) which permits an increased FSR of up to 10% for a building that demonstrates design excellence. The proposal is the result of a Stage 1 approval and a competitive process which has been endorsed by City staff. Therefore, the required design excellence process has been achieved and the consent authority can grant a 10% bonus floor space.
5.9 Preservation of trees or vegetation	Yes	The proposal does not involve the removal of any trees, and conditions of consent have been recommended to ensure that the proposal does not impact on surrounding street trees.

<b>Compliance Table</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
5.10 Heritage conservation	Yes	The subject site is located within the Potts Point/ Elizabeth Bay heritage conservation area. The proposal is not considered to result in detrimental impacts on the significance of the conservation area or surrounding heritage items. Refer to discussion under the heading Issues.
<b>Part 6 Local provisions - height and floor space</b>		
Division 4 Design excellence	Yes	The proposed development satisfies the requirements of this provision. The proposal is the result of a competitive design process following a Stage 1 development approval, and demonstrates a high standard of architectural design and quality finishes, and responds appropriately to the surrounding context.
<b>Part 7 Local provisions—general</b>		
Division 1 Car parking ancillary to other development	Yes	A maximum of 99 residential parking spaces and 25 retail parking spaces are permitted.  56 car parking spaces are proposed, comprising 54 residential and 2 retail spaces, which complies with the control. A condition is recommended to ensure that the adequate number of accessible spaces are provided.
7.14 Acid Sulphate Soils	Yes	The site is identified as containing class 5 Acid Sulphate Soil. No excavation is proposed and as such an acid sulfate soils management plan is not required.



Compliance Table		
Development Control	Compliance	Comment
7.17 Flood planning	Yes	The site is identified by Council as being flood prone. The proposal complies with the Annual Exceedance Probability (AEP) level in accordance with the Interim Floodplain Management Policy. However, openings to the basement from Darlinghurst Road do not comply with the Probable Maximum Flood (PMF) level. The extent of non-compliance is minor and the proposal is unlikely to increase the flood risk of the site or impact on existing stormwater or flood conditions to the surrounding properties and road network.
7.22 Development requiring preparation of a development control plan	Yes	As the height of the proposal is greater than 25 metres above ground level, a DCP is required under this clause. As per Section 83C of the EP&A Act, this requirement has been satisfied by way of a staged development application.

### Sydney DCP 2012

73. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – Kings Cross
The subject site is located in the Kings Cross locality. The proposal is in keeping with the unique character of the area and design principles by responding sympathetically to the conservation area in terms of scale and materials. The proposal respects the existing street wall height on the western side of Darlinghurst Road and reinforces the prominence and geometry of the intersection between Victoria Street, Darlinghurst Road and William Street.

<b>3. General Provisions</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
3.2 Defining the Public Domain	Yes	<p>The proposed development will not significantly impact on sun access to publicly accessible spaces or significant views from the public domain.</p> <p>Both frontages on Victoria Street and Darlinghurst Road are identified as Active Frontages under the DCP. The proposal maintains the existing entries to commercial tenancies from Darlinghurst Road, and provides additional activation by providing access to Level 1 tenancies from Darlinghurst Road and increasing the extent of glazing at ground level. Opportunities for activation of the Victoria Street frontage are limited by the existing fire exit, a substation, service doors and driveway on Victoria Street which are to be retained. The residential lobby provides a direct line of sight to Victoria Street and includes a reception area/micro cafe to provide greater activation and passive surveillance to this frontage.</p> <p>The proposal provides an awning the full length of the Darlinghurst Road frontage of the site, in accordance with the footpath awning and colonnades map under the DCP.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	<p>The proposal is the result of a competitive design alternatives process and Stage 1 development approval. The competitive design process has been undertaken in accordance with the City of Sydney Competitive Design Policy. The Competition Design Report is at Attachment C.</p> <p>The proposal seeks an additional 10% floor space which has been distributed in such a way as to minimise impacts on solar access, views, and the conservation area.</p>

<b>3. General Provisions</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not adversely impact on the local urban ecology. Conditions are recommended to protect the adjoining landscaped memorial.
3.6 Ecologically Sustainable Development	Yes	The proposal will not have unacceptable impacts on the environment and satisfies BASIX requirements.
3.7 Water and Flood Management	Yes	The site is identified as being flood prone. The proposal was referred to Council's Public Domain Unit who advised that the proposal is acceptable. This has been discussed above.
3.9 Heritage	Yes	The existing building is a detracting item within the Potts Point/ Elizabeth Bay heritage conservation area. The proposal responds sympathetically to the heritage conservation area and will improve the appearance and relationship of the site with its context. Refer to the discussion under the heading Issues.
3.11 Transport and Parking	No but acceptable	A total of 6 service spaces are required for the new uses proposed. However, due to the low clearance height within the existing basement, only 1 service bay for vans is provided near the entry to the garage. It is proposed to utilise the existing on-street loading zone on Victoria Street to accommodate servicing of the site, including the supermarket. While it is acknowledged that this is not an ideal situation, it can be supported as the proposal relates to an existing building and the traffic report submitted with the application has demonstrated that the street loading zone is capable of accommodating servicing requirements associated with the proposal. In addition, a condition is recommended to require 2 additional delivery van spaces so that there are at least more opportunities for deliveries to occur by van. Refer to discussion under the heading Issues.

<b>3. General Provisions</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
	<p>No but acceptable subject to conditions</p> <p>No but acceptable subject to conditions</p>	<p>4 accessible parking spaces are proposed on Basement Levels 2 and 3. The proposal is required to provide an accessible parking space for each adaptable unit, which equates to 21 accessible parking spaces. Non-compliance with this requirement is not acceptable, and a condition of consent has been recommended to ensure the provision of one accessible parking space for each adaptable dwelling.</p> <p>The proposal provides parking for 134 bicycles within Basement Level 1. The residential component of the development requires 139 bicycle parking spaces, 14 visitor spaces, 10 employee spaces and 14 customer spaces. Some additional bicycle parking can be accommodated within basement storage areas. A condition of consent has been recommended to ensure adequate bicycle parking and associated end of trip facilities are provided, with the quantum to match that required by the control.</p>
3.12 Accessible Design	Yes	A condition has been recommended to ensure the proposed development provides appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles. A Crime Risk Report was submitted with the application which is acceptable.
3.14 Waste	Yes	Separate waste storage and collection areas are provided for the residential and commercial uses proposed. Conditions of consent have been recommended to ensure that the proposed development complies with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.

<b>3. General Provisions</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
3.15 Late Night Trading Management	Yes but to be restricted by condition	<p>The site is within a Late Night Management Area under the DCP. This area allows base (permanent) hours between 6.00am to 2.00am and extended (trial) hours for 24 hours. The proposal includes a new supermarket on Level 1, with 24 hour trading. Trading hours for the two other retail tenancies at Level 1 have not been provided.</p> <p>It is recommended in the first instance, to permit trading for the supermarket between 6.00am and 2.00am, Monday to Sunday, consistent with base (permanent) hours permitted by the DCP. This is because the supermarket should first commence trading and demonstrate good, ongoing management before it is entitled to any extended hours.</p> <p>Trading hours for the other two retail tenancies on level 2 are recommended to be restricted between 7.00am and 10.00pm, Monday to Sunday, because the specific use of these tenancies is not yet known.</p> <p>The existing nightclub on the ground floor does not form part of this consent, and will be surrendered. It is proposed to be replaced with generic retail shops, the detail of which will form part of a future application. Therefore, at this point it is recommended to impose trading hours on any ground floor retail uses to between 8.00am and 7.00pm.</p>

<b>3. General Provisions</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
3.16 Signage and Advertising	No	The application was amended to remove the proposed commercial signage. A condition of consent has been recommended to require a separate development application for commercial signage, subject to a comprehensive signage strategy for the building. The supermarket signage indicated on the plans is not recommended for approval. An existing development consent which relates to building name signs on the roof of the previous hotel is recommended to be surrendered as the signage would detract from the design excellence of the building.

<b>4. Development Types</b>		
<b>4.2 Residential Flat, Commercial and Mixed Use Developments</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.2.1 Building height	Yes  Partially	The DCP allows for a height of greater than 15 storeys. The proposal provides a building height of 19 storeys, which complies with this control.  A street frontage height control of 4 storeys applies to Victoria Street and 3 storeys applies to Darlinghurst Road. The height of the podium steps up from 3 to 4 stories on Darlinghurst Road and from 2 to 3 stories on Victoria Street. The height of the podium is considered to be acceptable as it responds to the existing scale of surrounding development and is of the same scale approved by the Stage 1 envelope.
4.2.2 Building setbacks	Yes	No building setbacks are specified for the site. The proposal maintains the existing zero setbacks of the podium on Victoria Street and Darlinghurst Road. This is consistent with the setbacks of the adjoining buildings.

4. Development Types		
4.2 Residential Flat, Commercial and Mixed Use Developments		
Development Control	Compliance	Comment
4.2.3 Amenity	Partially	The DCP controls in relation to amenity largely replicate the controls and rules of thumb in SEPP 65 and the Residential Flat Design Code (RFDC). Therefore, issues related to amenity are discussed in the table attached to the SEPP 65 comments.
4.2.7 Heating and Cooling Infrastructure	Yes	The proposal includes centralised areas for mechanical plant. Appropriate conditions of consent have been recommended regarding noise and maintenance of plant.
4.2.8 Letterboxes	Yes	The proposal is capable of complying with Australia Post requirements regarding letterboxes.

## ISSUES

### Compliance with Stage 1 Development Consent

74. The Stage 1 development consent (D/2013/1747) approved a building envelope up to 55m in height, but did not provide for any physical works or details regarding the layout and number of residential units, design of the building exteriors, landscaping or floor space. A copy of this consent and approved plans are at Attachment B.
75. The consent includes a number of conditions which must be met by the current Stage 2 Development Application, which are addressed below.

#### Condition 6

- (a) *Any Stage 2 development application must be contained wholly within the approved building envelope.*
- (b) *Any Stage 2 development application must include measures for the ongoing protection of the memorial planting located adjacent to the southern corner of the site.*
76. The current application complies with the 55m height of the approved building envelope but proposes variations in terms of tower setbacks (refer to Figure 31). The variations do not result in any significant view loss or overshadowing of surrounding residential development. A modification to the Stage 1 envelope has been submitted to ensure consistency with the current application, and is being assessed concurrently. Suitable conditions are recommended in order to protect the adjoining memorial planting.

Condition 7

*Any Stage 2 Development Application must comply with all aspects of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65) and the Residential Flat Design Code (RFDC). A detailed table of compliance is to be submitted with any Stage 2 Development.*

77. The proposal is considered to be satisfactory when assessed against SEPP 65 and the Residential Flat Design Code (RFDC). This has been discussed above and in further detail below.

Condition 8

*Any Stage 2 development application must incorporate the following design modifications:*

- (a) The wrap-around awning extending across the southern elevation is not supported. Any future competition brief or Stage 2 development application must not include any awning to the southern elevation.*
  - (b) The continuous awning to Victoria Street is not supported. Any future competition brief or Stage 2 development application should include entry awnings to the western elevation at an appropriate height and scale.*
  - (c) The garden bed on Council land at the southern tip of the site is to be excluded.*
78. The proposal has incorporated all of the above design modifications.

Condition 9 (a)

*A competitive process must be held in accordance with Clause 6.21 of Sydney Local Environmental Plan 2012 and Clause 3.3 of Sydney DCP 2012. The competition must be held before the lodgement of any Stage 2 development application for the site.*

79. The application is the result of a competitive design alternatives process undertaken in accordance with these requirements. The Competitive Design Alternatives Process Report is at Attachment C.
80. Condition 9(b) requires the Stage 2 Development Application and design brief to address the following:
- (i) Modulation to break up the apparent building length and appropriate articulation of all facades.*
  - (ii) The scale and rhythm of the podium facade should relate to the vertical proportions and grain established along Darlinghurst Road.*

Comment: The facades of the tower are articulated through the pattern of window openings and relief provided by inset balconies of varying depths, while the podium levels feature a fine grain tiled facade with projecting window reveals, in order to relate to the grain of surrounding development.



- (iii) *Design and location of appropriate passive shading devices to exposed facades.*

Comment: The scheme has been amended to replace shading devices with high performance glazing, which is capable of satisfying BASIX requirements.

- (iv) *A significant proportion of residential units with double height spaces and dual aspects should be provided in order to provide adequate cross ventilation and compensate for low floor to ceiling heights.*

Comment: The application proposes 38 cross over apartments in addition to 38 dual aspect apartments. This accounts for 55% of the apartments proposed. In addition 4 apartments contain double height spaces Combined, this represents 57.5% of apartments.

- (v) *Residential uses on the first floor of the podium is not supported. Consideration must be given to appropriate types and distribution of commercial and residential uses within the lower levels of the building, particularly with regard to residential amenity.*

Comment: No apartments are proposed on Level 1 of the podium, which will be the supermarket and retail tenancies. An acoustic report was submitted with the application to address the impact of the existing and proposed commercial uses within the podium levels of the building on residential amenity. Appropriate conditions of consent have been recommended.

- (vi) *The distribution of height and bulk should minimise potential view impacts on surrounding development. In particular, careful consideration must be given in determining the appropriate location of any bonus floor space or height that may be awarded.*

Comment: The distribution of height and bulk does not result in view impacts or additional overshadowing of the public domain or surrounding development. Refer to discussion under the heading Issues.

- (vii) *The provision of quality private and communal landscaped open space, having regard to site conditions. It should be noted that winter gardens may be appropriate in this location, however these would be included in floor space calculations.*

Comment: The proposal provides a communal landscaped terrace on Level 2 comprising approximately 407m<sup>2</sup>, and 92% of apartments (or 128 apartments) are provided with private open space in the form of balconies and terraces. In addition, a large common room is provided central to the communal open space. The proposal is considered to provide high quality landscape design for both private and communal open spaces.

- (viii) *An appropriate mix of residential units must be provided in accordance with Sydney Development Control Plan 2012.*

Comment: The application is considered to provide a suitable dwelling mix. Recommended amendments to apartment configurations will not result in a non-compliant unit mix.

- (ix) *Opportunities for increased activation on Victoria Street.*

Comment: Opportunities to increase activation to Victoria Street have been considered, however this is constrained by the location of an existing substation, fire stairs, plant, as well as loading and vehicle access on basement level 1. The application provides activation to Victoria Street through the design of the residential lobby, which includes a reception area/micro cafe, and the incorporation of increased glazing to the ground level along the Victoria Street elevation as it wraps around to Darlinghurst Road. Overall, despite the constraints posed by the existing structures it is considered that the proposal improves the activation to Victoria Street.

- (x) *Opportunities to incorporate public art, in accordance with the City of Sydney Public Art Policy.*

Comment: The application has not provided any public art. An appropriate condition of consent has been recommended requiring the preparation of a public art strategy for the site.

- (xi) *Opportunities to incorporate high quality communal green roof and communal landscaping within the site.*

Comment: The proposal does not provide a green roof, but incorporates private roof terraces for 7 apartments on Level 18, private courtyards for 7 apartments on Level 3 and a communal landscaped terrace on Level 2, on the roof top of the podium. The proposal is considered to provide a high quality landscape design for both private and communal open spaces.

- (xii) *Requirements of RailCorp contained in condition 11.*

Comment: Sydney Trains (formerly RailCorp) was notified of the application, and raised no objections. The requirements of Sydney Trains have been included in the recommended conditions of consent.

- (xiii) *The ability of the proposed development to comply with the relevant provisions of Council's Policy for Waste Minimisation in New Developments 2005 which requires facilities to minimise and manage waste and recycling generated by the proposal.*

Comment: The proposal complies with Council's *Policy for Waste Minimisation in New Developments 2005*. While the City's garbage trucks cannot enter the basement to collect residential waste, a garbage room is located at street level and can be collected from the street. Waste chutes are also provided on each floor and a separate area for bulky goods is provided in the basement. Supermarket waste will be transported via a dedicated lift to a separate supermarket waste room.

#### Condition 10

*Any Stage 2 development application must be accompanied by a detailed contamination investigation prepared by a suitably qualified consultant.*

81. This condition is proposed to be deleted under a Section 96 modification to the Stage 1 development consent which is being assessed concurrently (D/2013/1747/A). The proposal does not involve any excavation or ground penetrating works, and as such the deletion of this condition is recommended.

Condition 11

*Any future Stage 2 development application must satisfy RailCorp requirements (refer Attachment B).*

82. The proposal was referred to RailCorp (now Sydney Trains). Requirements that largely replicate Condition 11 were provided in response, and have been included in the recommended conditions of consent.

Condition 12

*The building must provide high levels of acoustic attenuation for occupants when windows are closed. Any future Stage 2 development application must be accompanied by an acoustic report prepared by a suitably qualified acoustic consultant.*

83. A Noise Impact Assessment prepared by Acoustic Logic was submitted with the application, and amended on 5 August 2015. This assessment recommends acoustic attenuation measures to ensure that noise does not detrimentally impact on residential amenity. This is acceptable and suitable conditions are recommended.

Condition 13

*Any Stage 2 development application must include a flooding and overland flow report prepared by a suitably qualified engineer. The report must include, but not be limited to, the following information:*

- (a) A review of the impact of overland flow and flooding in the area;*
- (b) Set flood planning levels using the 100 year flood level for all entry points and lifts; and PMF flood level for all driveway accesses for the sites relevant frontages.*

84. These requirements have been satisfied by the submission of a Flood Statement prepared by Taylor Thomson Whitting (TTW). Flooding has been discussed above.

Condition 14

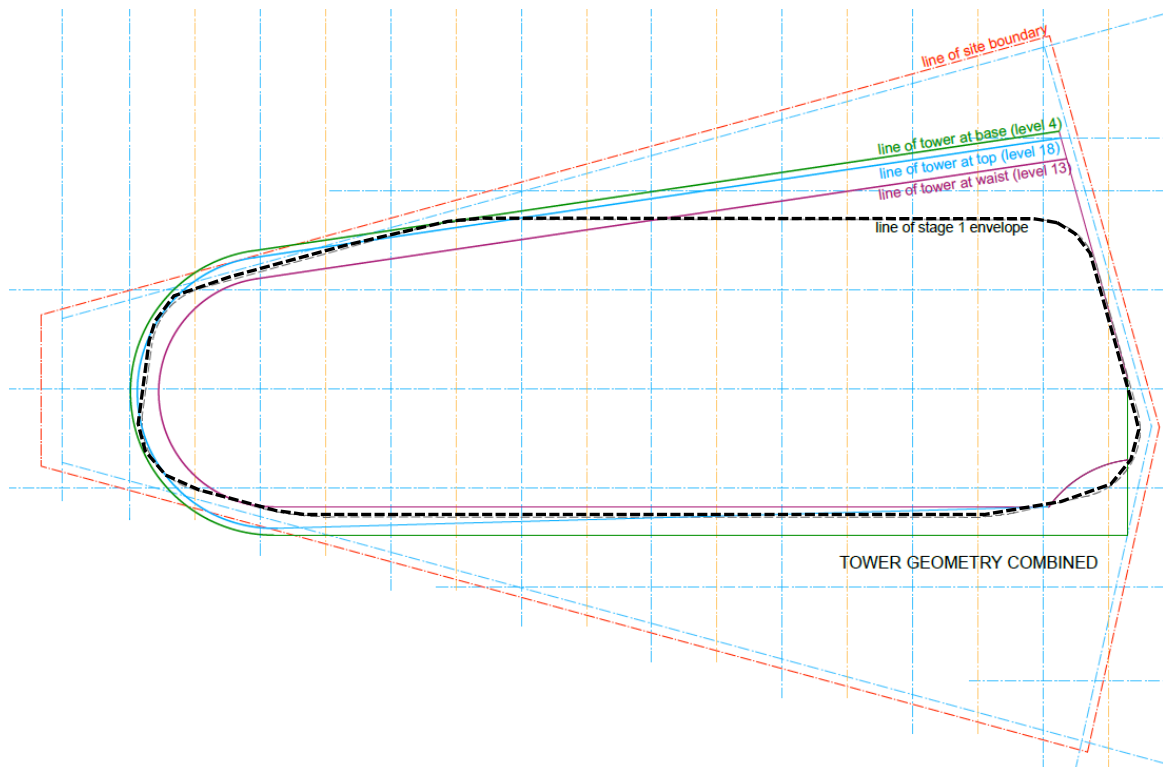
*Three copies of a detailed Public Domain Plan must be prepared by an architect, urban designer or landscape architect and must be lodged with Council's Public Domain Section as part of any Stage 2 Development Application.*

85. The application does not include a Public Domain Plan as the scope and design of future upgrades to the public domain in the vicinity of the site (including the Jacaranda for Jasper memorial) have yet to be determined by Council. An appropriate condition has been recommended to address this.

Condition 15

*A detailed landscape plan, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted as part of any Stage 2 Development Application.*

86. A detailed landscape plan was submitted with the application. Council's Landscape Assessment Officer considers the landscape plan to be satisfactory.

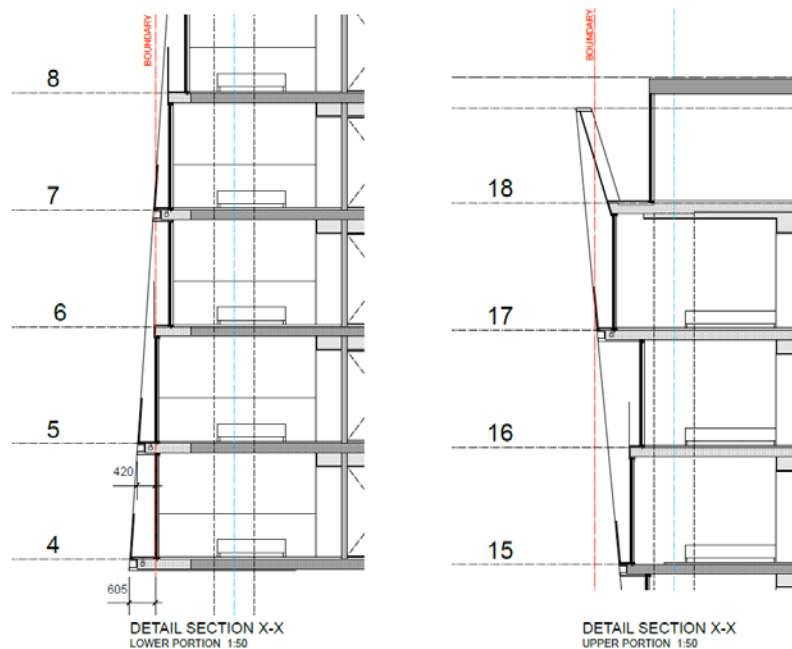


**Figure 31:** Diagram showing the geometry of the proposal at various levels compared to the approved Stage 1 building envelope

### Height, Scale and Changes to the Approved Envelope

87. Bulk and massing have been considered in the assessment of the Stage 1 Development Application and during the competitive design process, which have informed the current Stage 2 application.
88. The proposal complies with the maximum building height of 55m under Sydney LEP 2012 and the height of greater than 15 storeys under Sydney DCP 2012.
89. The proposal will result in an increase in the height of the podium by 1 to 1.5 metres at the southern end of the site and 2 to 2.6 metres at the northern end of the site. The proposed height of the podium complies with the 4 storey street frontage height control that applies to Victoria Street, and 3 storey street frontage height control that applies to Darlinghurst Road and also relates to the scale of development along Darlinghurst Road which is predominantly between 3 and 5 storeys.

90. The scale of the proposed development is comparable to other large scale residential buildings in the vicinity such as the Elan (1 Kings Cross Road) and the Zenith (82–94 Darlinghurst Road) and is considered to be suitable for the prominent corner location that the site occupies.
91. The tower is considered to be well articulated and proportioned with a vertical stretcher patterned facade broken up by varying balcony depths and tapered geometry.
92. The geometry of the tower results in minor projections beyond the site boundary, up to a maximum of 605mm (Refer to Figures 31 and 32). Minor projections also occur at the podium level as a result of projecting steel framed window reveals. These projections are generally less than 450mm and are an integral part of the design. As the projections beyond the boundary do not contain any gross floor area, these are considered to be acceptable.

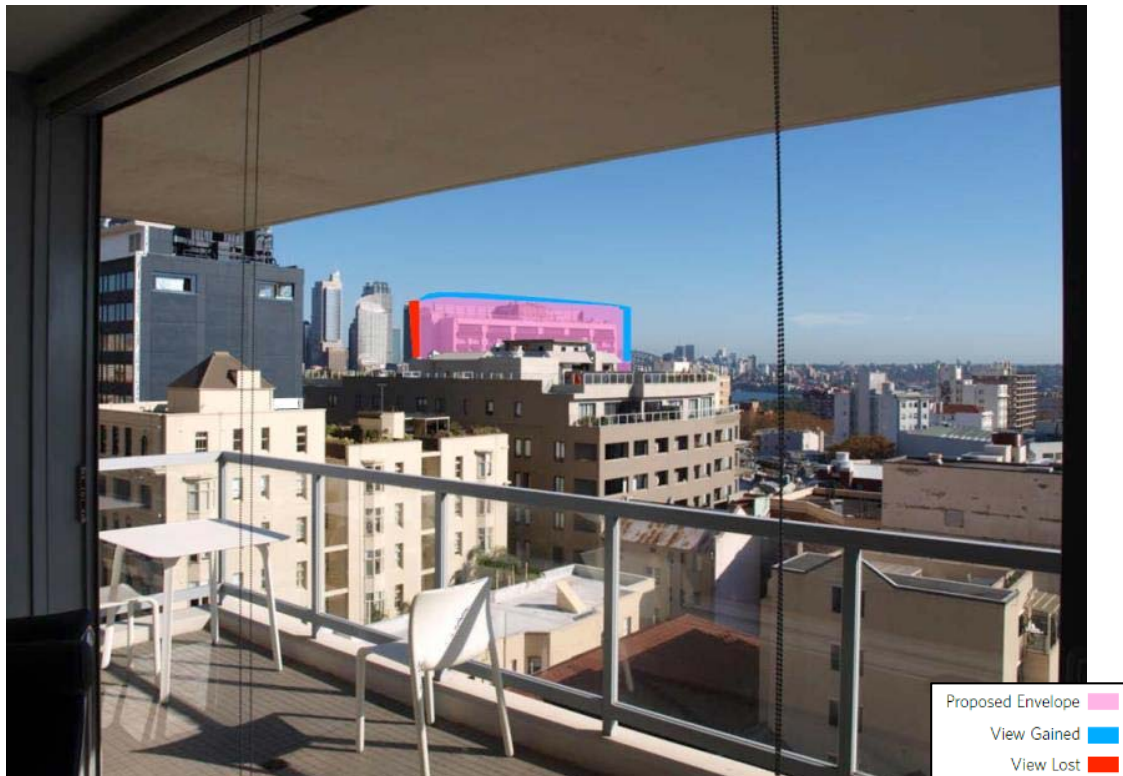


**Figure 32:** Sections through the proposed tower showing the minor projection of the facade beyond the site boundary at the lower and upper portion of the tower

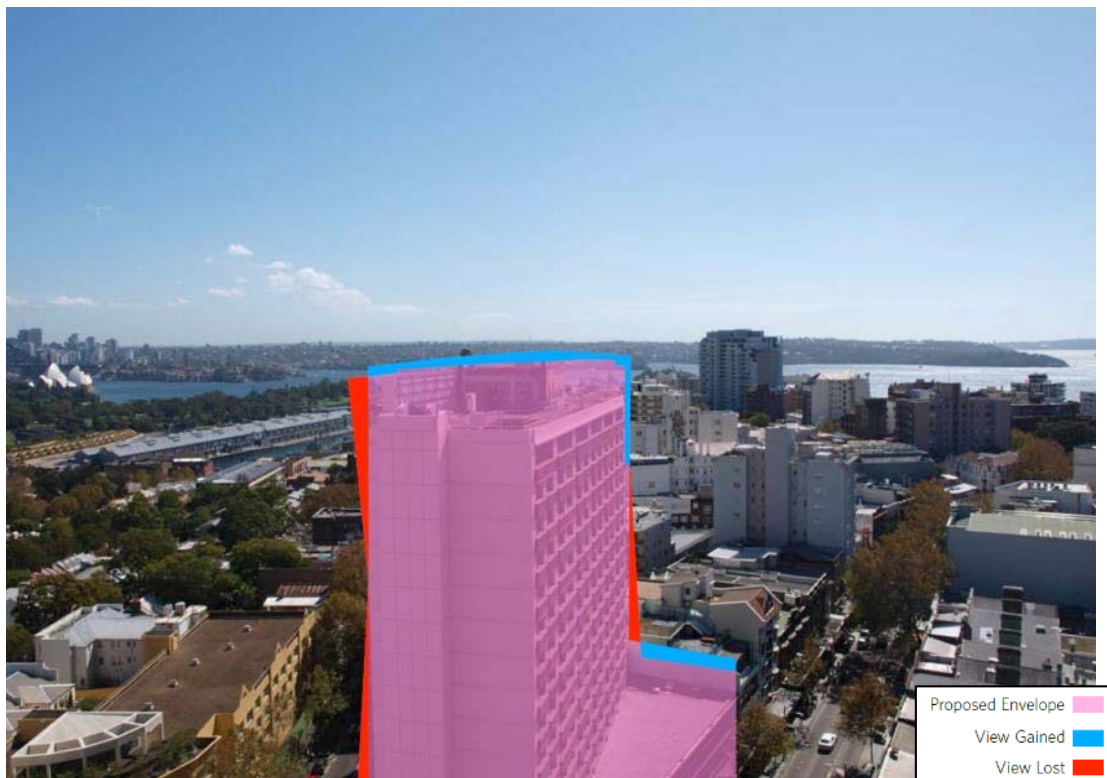
93. The podium projections were envisaged in the competition entry, and the competition report refers to maintaining the projections in the podium, while ensuring that no gross floor area protrudes.
94. With regard to the envelope changes, this is discussed in more detail in the Section 96 application to modify the Stage 1 consent. However, in summary, the envelope changes are shown in figure 31. The north western corner of the tower is proposed to protrude beyond the Stage 1 envelope. This helps give the tower its hourglass and tapered shape. This additional space was a feature of the competition entry and was argued on the basis that there would be no additional view loss or overshadowing as a result of the additional bulk. The selection panel commented that the change to the Stage 1 envelope would require a Section 96 application, which has now been lodged concurrently with the Stage 2 Development Application.

### View Impacts

95. As part of the Stage 1 Development Application, a detailed view impact assessment was undertaken from surrounding properties at 1 Kings Cross Road (the Elan), 3 Kings Cross Road (Altair Apartments) and 82-94 Darlinghurst Road (Zenith). The assessment was conducted in response to submissions received and was based on the planning principles established by Senior Commissioner Roseth in the Land and Environment Court decision of *Tenacity Consulting v Warringah* [2004] NSWLEC140.
96. Of the 15 properties that were inspected, the Stage 1 building envelope was considered likely to result in a moderate impact on views from living rooms of 4 properties.
97. A view impact analysis was submitted with the current Stage 2 application, following the approach adopted for the Stage 1 view impact assessment.
98. Because the geometry of the Stage 2 tower differs from the approved Stage 1 envelope (as shown in Figure 31 above), the proposal results in a reduction in some areas to the extent of view loss from surrounding properties, shown in figures 33 and 34 below.
99. In response to the notification period, a submission was received from a property owner at 13-15 Bayswater Road raising concern about loss of views of the city and St Mary's Cathedral. This property was not included in the view impact assessment conducted for the Stage 1 Development Application as no submissions were received from this property during the assessment of this application.
100. City staff attended the property in question to assess existing views and the potential impact arising from the proposal. Existing views from living room windows and a balcony are primarily in a northerly direction with partial views of the city and St Mary's Cathedral to the west. This is shown in figures 35 and 36 below.
101. The proposal is considered likely to result in negligible impacts on views from the property at 13-15 Bayswater Road.



**Figure 33:** View impact analysis from an apartment at 3 Kings Cross Road showing that the proposal will generally result in a reduction in the loss of views when compared to the approved Stage 1 building envelope



**Figure 34:** View impact analysis from an apartment at 82-94 Darlinghurst Road showing that the proposal will not impact on views when compared to the approved Stage 1 building envelope



**Figure 35:** The living room windows of an 8<sup>th</sup> storey apartment at 13-15 Bayswater Road, looking north. The subject site is only visible when standing immediately in front of window A, looking west, as shown below



**Figure 36:** View from living room window A from an 8<sup>th</sup> storey apartment at 13-15 Bayswater Road, looking west



### Apartment Size

102. It is noted that 36 (or 26%) of apartments proposed do not meet the minimum size requirements under the RFDC, as shown below:

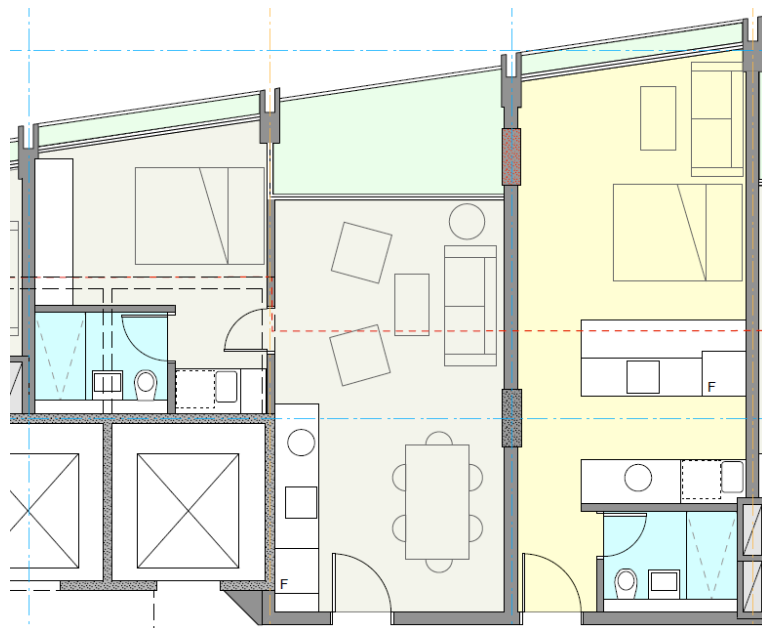
Studios below 38.5m <sup>2</sup>	1 bed below 50m <sup>2</sup>	2 bed below 70 m <sup>2</sup>
4 or 100%	26 or 43%	6 or 2%

103. It is also noted that the majority of apartments (74%) exceed the minimum size requirements under the RFDC, as shown below:

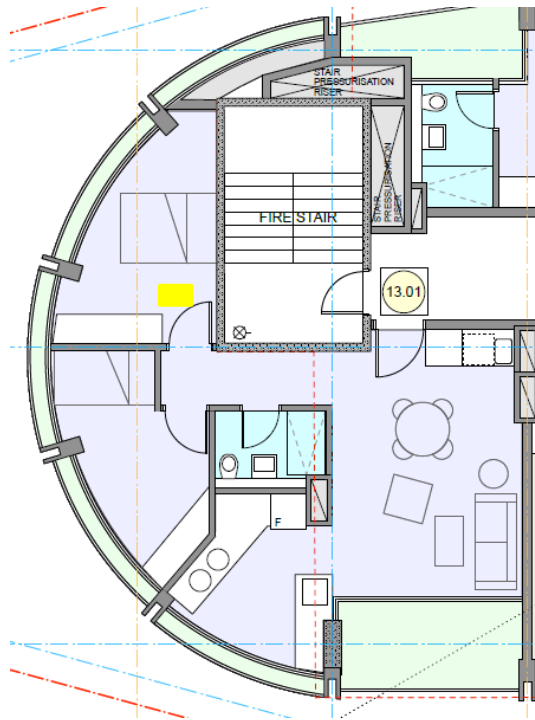
1 bed in excess of 50 m <sup>2</sup>	2 bed in excess of 70m <sup>2</sup>	3 bed in excess of 95 m <sup>2</sup>
34 or 57%	51 or 88%	10 or 100%

104. The majority of undersized apartments occur from Level 6 and above, and have a north-west orientation, thereby receiving good solar access and outlook.
105. 18 or 50% of undersized apartments vary between 2m<sup>2</sup> and 5m<sup>2</sup> below the minimum size requirement. Where these apartments achieve adequate solar access, natural ventilation, efficient layouts and good outlook, this extent of variation is considered to be relatively minor and can be accepted.
106. Those apartments with a greater variation from the minimum size requirements and do not achieve adequate solar access, natural ventilation, efficient layouts and good outlook are not considered to be acceptable in their current form. It is considered that the proposal can be reconfigured in such a way as to address concerns regarding undersized apartments without resulting in a non-compliant unit mix.
107. Studios of less than 35m<sup>2</sup> are not considered to provide acceptable amenity, and do not comply with the minimum size under the RFDC of 38.5m<sup>2</sup> or 35m<sup>2</sup> under the new Apartment Design Guide (ADG).
108. On Levels 6, 8 and 10, studios of less than 35m<sup>2</sup> are located next to 1 bedroom apartments which are between 5m<sup>2</sup> and 10m<sup>2</sup> below the minimum size requirement of 50m<sup>2</sup> under the RFDC and the ADG (refer to Figure 37). These adjoining studios and 1 bedroom apartments are recommended to be reconfigured and amalgamated to create appropriately sized 2 bedroom apartments. This will result in 6 apartments being reduced to 3 apartments.
109. On Levels 3, 10, 13 and 14 there are a total of 5 one bedroom apartments that are between 4m<sup>2</sup> and 9m<sup>2</sup> below the minimum size requirement of 50m<sup>2</sup> under the RFDC and the ADG. These are recommended to be reconfigured to create appropriately sized (and in some cases over-sized) studios. This will not reduce the number of apartments, however, it will redesign the existing affected apartments.

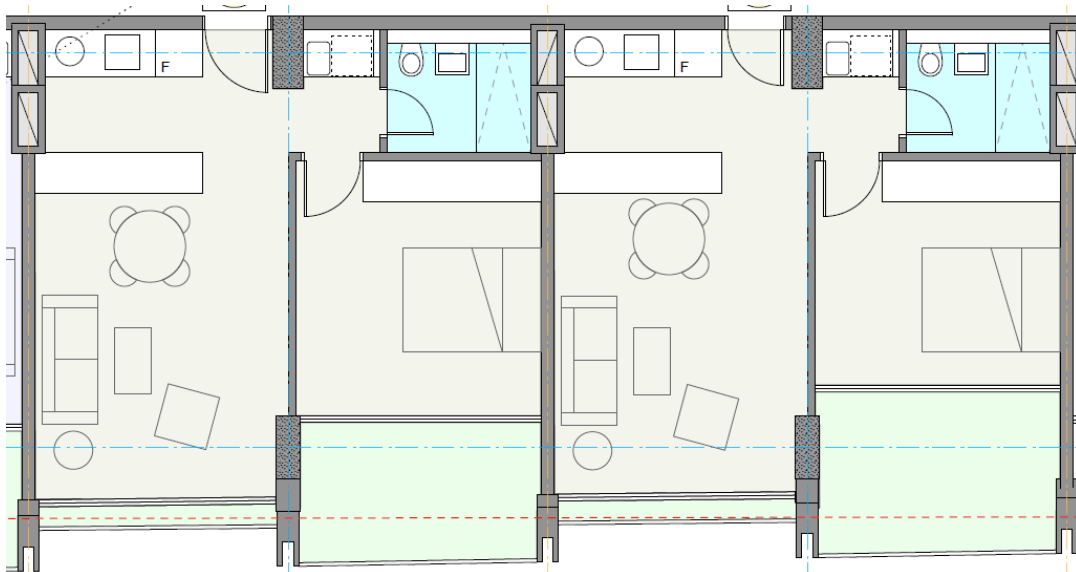
110. On Levels 10, 12, 13, 14, 15, 16 there are a total of 6 two bedroom apartments located at the southern end of the tower that are between 5m<sup>2</sup> and 18m<sup>2</sup> below the minimum size requirement of 70m<sup>2</sup> under the RFDC and the ADG (refer to Figure 38). These apartments recommended to be reconfigured to reduce the number of bedrooms to 1, which will make them compliant 1 bedroom apartments. This will not reduce the number of apartments, however, it will redesign the existing affected apartments.
111. On Levels 12, 13, 14, 15, and 16 the proposal provides 10 adjoining one bedroom apartments with an eastern orientation that are between 5m<sup>2</sup> and 8m<sup>2</sup> below the minimum size requirement of 50m<sup>2</sup> under the RFDC and ADG (refer to Figure 39). These adjoining studios and 1 bedroom apartments are recommended to be reconfigured to create appropriately sized 2 bedroom apartments. This will reduce the number of apartments by 5.



**Figure 37:** Example of an undersized 1 bedroom apartment adjoining an undersized studio that can be reconfigured to provide an appropriately sized 2 bedroom apartment



**Figure 38:** Example of an undersized 2 bedroom apartment at the southern end of the tower that can be reconfigured to provide an appropriately sized 1 bedroom apartment



**Figure 39:** Example of adjoining undersized 1 bedroom apartments that can be reconfigured to provide an appropriately sized 2 bedroom apartment

### Overshadowing

112. The proposal would result in some minor additional overshadowing of the public domain between 9am and 12pm in mid-winter. This is not considered to significantly impact on the public domain.

113. The proposal would result in some minor additional overshadowing of residential development at 13-15 Bayswater Road between 2pm and 3pm in mid-winter. The extent of overshadowing of this development is marginally reduced as a result of the current proposal when compared to the approved Stage 1 building envelope, and is not considered to detrimentally impact on residential amenity.
114. The proposal would result in some minor additional overshadowing of the podium levels of the mixed use development at 82-94 Darlinghurst Road (including the Zenith tower) between 11am and 1pm in mid-winter. The podium levels of this development do not contain any residential development. The overall extent of overshadowing of this development is marginally reduced as a result of the current proposal when compared to the approved Stage 1 building envelope, and will not result in any detrimental impact on residential amenity.
115. The proposal would result in some minor additional overshadowing of commercial development located at 200-225 Victoria Street at 9am and 72-80 Darlinghurst Road between 12pm and 2pm in mid-winter. The extent of additional overshadowing as a result of the current proposal when compared to the approved Stage 1 building envelope is marginal and will not result in material impacts on amenity.

#### **Site Loading and Servicing**

116. The development is required to provide a minimum of 2 service vehicle parking spaces for the proposed residential use, and 4 service vehicle parking spaces for the new retail uses proposed.
117. 1 service/ courier bay is located on Basement Level 1 adjacent to the car park entry.
118. The existing basement has an entry clearance of approximately 2m, so that medium and heavy rigid vehicles cannot access the site. The courier/ service bay on Basement Level 1 can therefore only accommodate cars and delivery vans. The structural columns in the existing basement and building also mean that the basement cannot be readily and feasibly retro-fitted to allow large vehicles and on site loading.
119. It is proposed to utilise the existing 11.5 metre long on-street loading zone on Victoria Street for all other site servicing, including the supermarket loading and waste collection. This is consistent with the current servicing arrangements for the existing commercial uses within the site, including the 227 room hotel.
120. The proposed supermarket would require up to 3 deliveries per day, delivered via trucks up to 11m in length. The delivery requirements of the proposed supermarket have been verified using comparative data for similar sized supermarkets in the Central Sydney area.
121. A Traffic Assessment has been submitted which demonstrates that the loading zone on Victoria Street is capable of accommodating the 3 proposed supermarket deliveries per day, in addition to servicing the existing commercial uses and other surrounding properties.
122. The prospective tenant of the supermarket is aware of the site constraints in relation to on street loading. They have confirmed that this arrangement would work for their small supermarket model, as well as restricting the deliveries to the loading bay times of between 7.00am to 6.00pm.

123. While it is acknowledged that this situation is not ideal, there are positives to providing a supermarket in level 1 of the podium. The competition report acknowledged that level 1 in the podium should not be residential uses so as to give a further buffer between the existing ground floor nightclub and residents, and to enable the design to include more glazing in the external walls as a better way of activating the street and improving safety and security of the surrounding streets.
124. In addition, the large floor plate is better suited to a single tenant that does not require immediate shopfront presentation to the street, and would be easier to manage as a single entity. Therefore, on balance, and in this circumstance where the existing building is detracting and will be reused and improved, it is acceptable that the new retail uses accommodate their loading by using the existing on street loading zone on Victoria Street.
125. The City's Transport Officer has agreed that although this is not the ideal situation, the existing loading zone could be used for the site.

### **Heritage**

126. The site is located within the Potts Point/ Elizabeth Bay Conservation Area (C51) and is identified as a detracting item.
127. In the immediate vicinity of the site are two local heritage items at 72-80 Darlinghurst Road (Minton House) and 248 William Street (Kings Cross Hotel). Approximately 130m to the south of the site, at the intersection of Darlinghurst Road and Victoria Street is the Darlinghurst Fire Station which is also a local heritage item. Refer to Figure 14.
128. The proposal is in keeping with the predominant 3-4 storey street wall height along Darlinghurst Road, similar in height to that of Minton House directly opposite the site.
129. The podium is proposed to be clad in glazed green tiles laid in a brick pattern, articulated with a scalloped parapet line and moulded window reveals which break down the existing horizontal nature of the podium.
130. In order to relate more appropriately to the streetscape of Darlinghurst Road, the height of the awning to the eastern elevation was amended to be more consistent with adjoining buildings and to limit the raised height section of the awning to the supermarket entrance.
131. The design of the building, while contemporary in nature, compliments surrounding development in terms of its scale, material palette and distinctive geometry. The hourglass shape of the southern elevation of the tower and the unusual scalloped podium form provides a compelling corner treatment that responds to the visually prominent site and the distinctive corner presentation of the Darlinghurst Fire Station.
132. Council's Heritage Specialist has reviewed the application and is generally supportive of the proposal subject to further articulation of the podium in order to provide increased vertical proportions. This is, however, not considered to be appropriate as adjusting the proportions of the podium would affect the proportions of the development as a whole and the relationship between the podium and the tower.

133. The proposal enhances the appearance of the existing building and its relationship to the public domain and surrounding buildings. The proposal will have a positive impact on the heritage conservation area and will not result in detrimental impacts on surrounding heritage items.

### **Wind**

134. Due to the height of the proposed development and its location on a ridge surrounded by high rise development, the site will be affected by wind.
135. A report addressing wind impacts has been submitted with the application.
136. The report concludes that the curvature of the tower and inset balconies will deflect wind horizontally effectively minimising both downward and upward flows. As a result wind conditions on the balconies and podium will generally be acceptable. The proposal will not impact on wind conditions at street level.

### **Awnings**

137. A cantilevered awning is proposed along the full length of the Darlinghurst Road frontage. An awning is also proposed at the entrance to the residential lobby on Victoria Street.
138. The proposed Darlinghurst Road awning is approximately 2.6m deep and is between 3.2m and 6.7m above footpath level. This complies with the requirements for footpath awnings under Section 3.2.4 of Sydney DCP 2012.
139. The Victoria Street awning is approximately 2m in depth and 2.9m above footpath level. A condition of consent has been recommended to require the Victoria Street awning to be raised to comply with the minimum height required under Sydney DCP 2012 of 3.2m above footpath level.
140. Subject to the raising of the Victoria Street awning by approximately 300mm, both awnings are considered to be compatible with the scale and architectural design of the building and are supported.

### **Access**

141. An Accessibility Audit Report was submitted with the application, which indicates that the proposal is capable of complying with the relevant Australian Standards and BCA provisions to ensure access for people with disabilities.
142. The proposal provides 21 adaptable dwellings, which equates to 15% of dwellings. This is consistent with the provisions of Section 3.12.2 of Sydney DCP 2012.
143. An appropriate condition of consent has been recommended with regard to the provision of access, facilities and parking spaces.

### **Strata Subdivision**

144. The proposal does not include strata subdivision.

145. The entire building was previously subdivided into four stratum lots. The plan of subdivision, DP 1181499, was registered on 28 March 2013. The current development occupies all four lots of that subdivision and, in some respects, compromises the boundaries of that subdivision. It is considered that the site should therefore be consolidated and/or re-subdivided.
146. Some of the Restrictions on Use that are normally required, in particular, the requirement that car parking spaces are restricted to residential use, already exist and have been registered on the Titles to lots in the subdivision. Therefore, this specific condition is not needed on this consent.
147. However, the title also has a restriction regarding the quantum of floor space, which favours Council and limits the floor space to that of the existing building. It appears that this restriction was imposed in late 2012, but was carried over from an earlier file note when the FSR control for the site was 3:1.
148. The current FSR control in Sydney LEP 2012 is 8:1, and the design excellence provisions allow an additional 10%, which would result in a FSR of 8.8:1. The current Stage 2 proposal results in a FSR of 8.78:1, which complies with the LEP.
149. Given this, it is considered that the Stage 2 proposal does not conflict with the planning controls. After determination of the application, the Applicant would be required to seek the approval of Council to lift the title restriction relating to floor space, or to have that restriction amended to reflect any approval.

#### **Other Impacts of the Development**

150. The proposed development is capable of complying with the BCA. It is Class 2 and Class 6.
151. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

#### **Suitability of the site for the Development**

152. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed.

#### **INTERNAL REFERRALS**

153. The application was referred to Council's:
- (a) Building Services Unit;
  - (b) Transport Unit;
  - (c) Heritage Specialist;
  - (d) Urban Designer;
  - (e) Environmental Health Unit;
  - (f) Public Domain Unit;

- (g) Tree Management Unit;
  - (h) Surveyors; and
  - (i) Waste Management Unit.
154. No objection to the amended proposal was raised, subject to the imposition of appropriate conditions. The recommended conditions have been included in the recommendation of this report.
155. The Transport Unit did raise some concerns with the on street loading arrangement for the supermarket. This has been discussed above.
156. The application was not referred to the Design Advisory Panel as it is the result of a competitive design process.

## EXTERNAL REFERRALS

### Sydney Trains

157. Sydney Trains raise no objection to the application and their recommended conditions of consent have been included in the recommendation.

### Notification, Advertising and Delegation (Submissions Received)

158. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development was notified and advertised for a period of 28 days between 28 March and 27 April 2015. As a result of this notification there were 9 submissions received.
159. Objections raised in submissions are summarised below:
- (a) *It is premature to approve a Stage 2 DA when a modification to the Stage 1 approval is under assessment.*

**Response** – An application to modify the Stage 1 building envelope was lodged concurrently with the Stage 2 application in order to ensure consistency. The Section 96 application to the Stage 1 envelope was notified in accordance with Council policy. This is not unusual provided that the two applications are considered concurrently.

- (b) *Careful consideration needs to be given as to how any such future residential uses will relate to and integrate with existing and long-established commercial and late night land uses so as to avoid any potential for future land use conflicts.*

**Response** – The application has demonstrated that the proposed residential use will achieve an acceptable level of amenity. An acoustic report has been submitted which has provided recommendations regarding the construction of the development to ensure that noise issues are satisfied. A condition is recommended requiring the surrender of the approvals which relate to the nightclub uses on the ground floor.



- (c) *The proposal has not adequately addressed impacts on existing view corridors, overshadowing, solving building access for pedestrians and vehicles or the insufficient parking provided for such a high density development.*

**Response** – These matters are addressed in the report. In terms of parking, the City's controls are maximums, not minimums and the building is very close to Kings Cross train station.

- (d) *The proposal will affect views of the city from surrounding residential development and will create a claustrophobic effect on the already busy Kings Cross intersection.*

**Response** – Both the current application and the Stage 1 development application include detailed view impact analysis, which has been discussed above.

- (e) *Council should examine all apartments in the Zenith building (82-94 Darlinghurst Road) which may be affected by the proposal, particularly with regard to view impacts and overshadowing.*

**Response** – Potential overshadowing and view impacts on apartments in the Zenith building resulting from the proposal have been assessed, and the proposal is not considered to result in significant impacts. During the assessment of the Stage 1 Application Council officers and external consultants engaged by the Applicant attended a number of apartments within the Zenith building to conduct the view impact analysis which concluded that no significant view loss would be experienced from residences within the Zenith building as a result of the proposal. Overshadowing and view loss are discussed in the report.

- (f) *The treatment of the podium levels is an inappropriate response to the Kings Cross Hotel, particularly its colour, fenestration and profile.*

**Response** – The proposal is not considered to result in detrimental impacts on the Kings Cross Hotel or the heritage conservation area. The scale of the podium relates to the scale of surrounding development, and the design is a well considered response to the surrounding context that displays a high quality of architectural materials and detailing, that has resulted from a competitive process.

- (g) *The noise impact assessment contains many inaccuracies and mistakes.*

**Response** – An amended acoustic assessment was submitted in response to feedback from Council staff. Council's Health and Building Unit has reviewed the amended assessment and is satisfied that this is satisfactory. Appropriate conditions of consent have been recommended with regard to noise.

- (h) *The proposed supermarket will negatively impact on traffic and parking.*

**Response** – The proposal will continue the existing loading arrangements for commercial uses within the site. As the basement cannot accommodate large vehicles this is considered to be acceptable.

- (i) *The design is not aesthetically pleasing, does not relate well to the site or its surrounds, and the green colour of the podium is inappropriate. Plants and facade/wind break structures should be incorporated into the design.*

**Response** – The application is the result of a competitive design process and is considered to represent design excellence. The application addresses wind conditions and it is considered that the proposed development will not result in unacceptable wind conditions at street level or within the development.

## **PUBLIC INTEREST**

160. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

## **FINANCIAL IMPLICATIONS/S94 CONTRIBUTION**

### **Section 94 Contributions**

161. The development is subject to a Section 94 Contribution of \$1,978,190.33 under City of Sydney Development Contributions Plan 2006. This calculation is based on the creation of 131 new dwellings (in accordance with recommended design amendments), a supermarket of 885m<sup>2</sup>, new specialty retail uses up to 398m<sup>2</sup>, and a credit for 60 existing employees. Council has identified an additional demand for public amenities and facilities as follows:

<b>Community Facilities</b>	\$ 104,416.69
<b>Public Domain</b>	\$ 209,956.94
<b>New Open Space</b>	\$ 1,638,057.36
<b>Accessibility</b>	\$ 16,524.08
<b>Management</b>	\$ 17,866.34
<b>Nett Total Contribution</b>	<b>\$ 1,986,821.41</b>

162. An appropriate condition of consent has been included.

## **RELEVANT LEGISLATION**

163. The Environmental Planning and Assessment Act 1979.

## **CONCLUSION**

164. The proposal is considered to display a high quality of architectural design and materials that responds to the prominence of the site and the surrounding built context. The design has responded appropriately to the Stage 1 approval and comments in the Competition Report. A Section 96 application seeking to modify the approved Stage 1 envelope has been lodged for consideration concurrently with the Stage 2 Development Application. The proposed changes to the envelope are acceptable as they retail the hourglass shape of the winning design and continue the tapered shape of the building.

165. It is acknowledged that full SEPP 65 compliance on the reused building would always be difficult. The proposal is considered to achieve an acceptable level of amenity, by using cross over apartments, and in some cases, oversized apartments. There is also a well landscaped communal roof terrace above the podium and a large common room attached to the roof terrace. Subject to conditions that will require some units to be redesigned so that they meet the minimum size requirements, the overall level of amenity achieved is acceptable.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

(Rebecca Thompson, Senior Planner)